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**United States
Department of Labor
Seventy-Third
Annual Report
Fiscal Year 1985**



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United States Department of Labor Seventy-Third Annual Report Fiscal Year 1985



William E. Brock, Secretary of Labor

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United States Department of Labor

William E. Brock¹	Secretary of Labor
Dennis E. Whitfield²	Chief of Staff
Ford B. Ford	Under Secretary
Dennis E. Whitfield (Nominee)	Under Secretary
Lenora Cole Alexander	Director, Women's Bureau
J. Brian Hyland	Inspector General
Michael J. Walsh³	Chairman, Employees' Compensation Appeals Board
Robert L. Ramsey	Chairman, Benefits Review Board
Nahum Litt	Chief Administrative Law Judge
William J. Maroni⁴	Deputy Under Secretary for Congressional Affairs
David F. Demarest, Jr.⁵	Deputy Under Secretary for Public and Intergovernmental Affairs
Elizabeth Z. Doyle⁶	Associate Deputy Under Secretary for Intergovernmental Affairs
Vernon R. Louviere	Director, Office of Information and Public Affairs

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Robert W. Searby	Deputy Under Secretary for International Affairs
James F. Taylor	Associate Deputy Under Secretary for International Affairs
Janet L. Norwood	Commissioner of Labor Statistics
William G. Barron, Jr.	Deputy Commissioner of Labor Statistics (Administra- tion and Internal Operations)
Donald E. Shasteen ⁷	Assistant Secretary for Veterans' Employment and Training
Garnett B. Prince, Jr. ⁸	Deputy Assistant Secretary for Veterans' Employment and Training
Vacant	Assistant Secretary for Labor- Management Standards
Ronald J. St. Cyr ⁹	Deputy Assistant Secretary for Labor-Management Standards
Stephen I. Schlossberg ¹⁰	Deputy Under Secretary for Labor-Management Relations and Cooperative Programs
Dennis M. Kass ¹¹	Assistant Secretary for Pension and Welfare Benefit Programs
David M. Walker ¹²	Deputy Assistant Secretary for Pension and Welfare Benefit Programs
Roger D. Semerad ¹³	Assistant Secretary for Employment and Training
Vacant	Deputy Assistant Secretary for Employment and Training
Roberts T. Jones	Administrator, Office of Job Training Programs

Thomas J. Hague	Director, Bureau of Apprenticeship and Training
Vacant	Administrator, Office of Employment Security
Richard C. Gilliland	Director, United States Employment Service
Carolyn M. Golding	Director, Unemployment Insurance Service
Francis X. Lilly	Solicitor
George R. Salem ¹⁴	Deputy Solicitor (National Operations)
Ronald Whiting	Deputy Solicitor (Regional Operations)
Michael E. Baroody ¹⁵	Assistant Secretary for Policy
Everson W. Hull ¹⁶	Deputy Assistant Secretary for Policy
Thomas C. Komarek	Assistant Secretary for Administration and Management
Betty Bolden	Deputy Assistant Secretary for Administration and Management
Sabina Jacobson	Librarian
Susan R. Meisinger	Deputy Under Secretary for Employment Standards
Craig A. Berrington	Associate Deputy Under Secretary for Employment Standards
Joseph N. Cooper ¹⁷	Director, Office of Federal Contract Compliance Programs
Lawrence W. Rogers	Director, Office of Workers' Compensation Programs

Vacant	Wage and Hour Administrator
Vacant	Assistant Secretary for Occupational Safety and Health
Patrick R. Tyson	Deputy Assistant Secretary for Occupational Safety and Health
David A. Zegeer	Assistant Secretary for Mine Safety and Health
Thomas J. Shepich	Deputy Assistant Secretary for Mine Safety and Health

- ¹ Appointed 4/29/85
- ² Appointed 5/2/85
- ³ Appointed 5/14/85
- ⁴ Appointed 5/2/85
- ⁵ Appointed 5/2/85
- ⁶ Appointed 8/18/85
- ⁷ Appointed 6/20/85
- ⁸ Appointed 8/4/85
- ⁹ Appointed 5/20/85
- ¹⁰ Appointed 5/20/85
- ¹¹ Nominee
- ¹² Appointed 8/18/85
- ¹³ Nominee
- ¹⁴ Appointed 5/26/85
- ¹⁵ Appointed 8/2/85
- ¹⁶ Appointed 12/10/84
- ¹⁷ Appointed 8/4/85

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Report of the Secretary

American workers continued to ride the crest of a growing economy during the 1985 fiscal year. This economy produced a record number of jobs. As of September 1985, when the fiscal year ended, there were nearly 109.3 million Americans at work, the largest percentage of the population gainfully employed in our history. Over 8½ million workers had been added to American payrolls since the economic recovery began 34 months earlier.

Workers also benefited from a mild annual inflation rate of 3.2 percent in fiscal 1985. This moderate inflation rate, one of the lowest since 1967, contributed to the rise in the buying power of workers' paychecks and added to the nation's record productivity, the highest in the world.

The moderate rate of inflation and the record productivity also nurtured the roots of future domestic growth and enhanced our ability to compete in world markets.

The economic recovery helped 1,800,000 Americans rise above the poverty level in a 12-month period. Of these, over a half million were children—the largest annual reduction in childhood poverty in our history. The poverty rate for older Americans dropped to its lowest point in history, too.

Despite problems in a few industries, the resurgent American economy was pulling \$100 million worth of investment from other countries into the United States each year, a solid vote of confidence by the rest of the world in American workers and industry. In the 12-month period ending in September 1985, our economy created 640,000 new businesses, an average of more than 50,000 a month. This was especially good news for workers because one-half of all jobs in the last 10 years had been created in firms less than 4 years old.

Looking back, American workers were enjoying the strongest recovery since World War II. As the year ended, we could take strong satisfaction in this; but we realized that we must help even more Americans join in the prosperity—those still left out of the economic mainstream.

Our tasks at the Labor Department include providing training for persons lacking skills compatible with new technologies, helping dislocated workers regain a foothold in the job marketplace, and providing more opportunities for young workers.

Management of the Labor Department

As our management team moved into the Labor Department, midway through the 1985 fiscal year, we viewed a picture favorable to most American workers. It was imperative, nevertheless, that we take steps to improve the department's management efficiency and its delivery of services to the public. To determine just where remedial action was needed, I appointed 10 high level task forces within the Department. The scope of these task forces coincided with problem areas that arose during congressional confirmation hearings and ones that were surfaced by our transition team. Their recommendations coincided fairly closely with findings of a recent General Accounting Office draft report on Departmental management.

Specific problem areas in which the internal task forces were organized included:

- Employee Retirement Income Security Act enforcement.
- Expediting the regulatory process.
- Procurement management.
- Information resources management.
- Mine Safety and Health Administration inspections.
- Job Training Partnership Act oversight.
- Unemployment insurance oversight.
- Workforce planning.
- Accounting controls.
- Stronger direction by my office.

The most urgent recommendations were immediately put into effect. At the same time, we developed a new management system whose major components were to include: a four-step goal setting and progress measurement process, a timetable for implementation of department-wide and specific agency goals, a procedure for tracking progress and providing me with feedback, and a long range planning schedule for budget needs and establishment of future goals and initiatives.

This new management system was being designed to help the department achieve three basic goals:

- To improve economic opportunities for American workers by increasing their prospects for worthwhile employment and strengthening protection of their health and safety, retirement and other legal rights.
- To increase our nation's ability to compete successfully in the world economy by promoting more labor-management cooperation in the United States, making Federal regulations more cost-effective, and improving basic education and training and retraining for present and future American workers.

- To improve effectiveness of the department's operations by increasing our own productivity, encouraging creativity among employees, strengthening employee motivation, providing more and better coordination among Departmental units, and greater private sector support.

Highlights of the Year

I was sworn into office April 29, 1985, following confirmation by the Senate. From October 1, 1984, until I assumed office, the day-to-day operations of the department were handled by Under Secretary Ford B. Ford.

A major initiative during this period was the Department's campaign to build public and congressional support for passage of a Youth Employment Opportunity Wage (YEOW). I believe that this nation has failed to cope adequately with the persistently high rate of unemployment among youths. If we do not solve this problem, we may be faced with a permanent underclass of unemployable, or marginally employable men and women. This problem is so pressing that various solutions must be tried to find a combination of approaches that works. Obviously, one possible solution is the youth opportunity wage. As an incentive to employers to hire young people, and give them their vital first job, they would be allowed to pay 16 to 19-year olds \$2.50 an hour, rather than the federal minimum wage of \$3.35, during the summer months. As the fiscal year ended, the YEOW proposal had not been enacted, but we hope for passage in 1986.

After years of federal inaction on the issue of field sanitation facilities for agricultural workers, the Department announced in September 1985 that states would have 18 months to develop and implement their own rules for effective field sanitation; if they fail to act, the Occupational Safety and Health Administration will issue an appropriate regulation. Basic human decency, as well as health considerations, dictate that farm workers be provided with drinking water, handwashing and toilet facilities. I believe our decision in this matter is a balanced approach consistent with the traditional state role in public health and OSHA's responsibility to protect workers.

In September 1985, with thousands of American shoeworkers out of work because of foreign imports, I called on the governors of major shoe-producing states to help me draft specific proposals to help these people find new jobs and qualify for retraining and

relocation assistance if necessary. An initial \$5 million was committed under the Job Training Partnership Act in response to President Reagan's request that Federal assistance be provided in lieu of shoe import barriers.

Still another problem needing quick action was eliminating the backlog of claims under the black lung benefits program. We determined to end the intolerable delays that had held up benefits in some cases for years and caused extra hardships for elderly people in coal mining regions.

As a result, recommendations were developed to end this backlog within 4 years and we asked the Congress for support of a plan, based on findings of one of the 10 internal task forces.

Elements of the program included:

- A series of specific productivity improvements within the Office of Administrative Law Judges (OALJ) and Benefits Review Board (BRB).
- Adding 14 administrative law judges and 40 attorneys and support staff to the OALJ.
- Adding an additional panel of three judges and 40 attorneys and support staff to the BRB.
- Adding 38 personnel to the Solicitor's Office, including 28 attorneys and 10 support staff members.

As the fiscal year ended, there were several matters pending that would not be resolved until fiscal year 1986. We were in the midst of efforts to secure legislative relief for state and local governments from paying overtime under the Supreme court's *Garcia vs. San Antonio Metropolitan Transit Authority* ruling, which extended coverage of the Fair Labor Standards Act to state and local governments. We held that a compromise had to be acceptable to both state and local governments and to unions representing their employees. That this compromise was finally achieved is a tribute to congressional leadership.

We also sought solutions for the problems of workers whose plants closed down with little or no warning. A Task Force on Economic Adjustment and Worker Dislocation to explore possible solutions to these problems was named in October 1985.

An event of historical significance during the year was observance of the Bureau of Labor Statistics' centennial. In addition to a ceremonial gathering sponsored jointly by the Department and the Joint Economic Committee of the Congress, the Department published a historical volume, *The First Hundred Years of the Bureau of Labor Statistics*, to coincide with the event.

Problems Facing Workers

These actions took place against a backdrop of changes in the economy and in the kinds of jobs many workers performed. Competition in the world marketplace was becoming more severe. New ways had to be developed to further increase productivity of both workers and industry. The old adversarial relationship between management and labor needed to be replaced by a more cooperative approach, with government as the catalyst. Encouragement of labor management cooperation has become a priority of the Labor Department.

Other deep-seated economic problems had to be confronted. As technology changed rapidly, the need for better basic education in the United States became apparent. In the future, the average worker would have to make three or four career shifts in a lifetime to keep working in the changing technological scene. American public education in 1985 was not adequately preparing workers for the future. Too many students were dropping out of school, or failing to master basic concepts of language, numbers and logical thinking. They would need these concepts to compete for jobs in the later '80s and beyond. Otherwise, we would face the prospect of millions of unemployable people, dependent upon public aid.

In 1985, it was obvious that America must revive the traditions of integrity of workmanship and dedication to achievement. Facing the dual challenges of a changing technology and increasing foreign competition, labor and management would have to work together, or both would fail.

Yet we continued to enjoy prosperity. The economy was growing. Inflation remained low, and a record number of Americans were working as the year ended. It was imperative that we look to the future and help more Americans join in this prosperity and, at the same time, keep the gains we had made. In this respect, 1985 was a time both of hope, and one of challenge.



Employment and Training Administration

During the 1985 fiscal year, the Employment and Training Administration (ETA) refined its new training and employment system established by the Job Training Partnership Act (JTPA).

This enhanced ETA's ability to provide efficient management and fiscal oversight of all its programs.

At the fiscal year's end, JTPA had been fully and successfully implemented, and the new public-private delivery system was operating effectively in all states and service delivery areas (SDA's). The program's placement rate nationally was significantly exceeding expectations.

Other major accomplishments during the fiscal year included:

- Initiating a wide-range policy review to develop an assessment system designed to improve accuracy and timeliness of unemployment compensation revenue and payment activities.
- Continuing the implementation of the JTPA oversight system to review compliance activities
- Developing special programs to help workers in the steel, copper and shoe industries, and
- Starting a management information system for comprehensive monitoring of performance standards under JTPA.

Job Training Partnership Act

Fiscal year 1985 marked the second year of ETA's administration of the Job Training Partnership Act (JTPA). The JTPA was enacted into law in October 1982 and became fully operational in October 1983.

The JTPA is operated on the basis of a program year (PY), beginning on July 1st and ending on June 30th of the following year. The law provides that the program operate based on a 2-year planning cycle. The first full 2-year cycle began on July 1, 1984, with an appropriation of \$3.7 billion. For PY 1985, almost \$3.8 billion was appropriated. This provision of forward funding permits effective planning.

While JTPA builds on the experience of past training and employment programs, it represents a substantial departure from earlier approaches. This is particularly so in terms of the new institutional relationships reflected in the delivery system and in the emphasis on the system's performance in training for jobs in the private sector. The JTPA allows private and public partnerships

to make fundamental decisions on how to administer JTPA funds and on the types and mix of services to be provided. The principal differences that distinguish JTPA from earlier employment and training are the following:

- The JTPA is sharply focused on training, with a legislatively mandated requirement that at least 70 percent of all funds be used for this purpose;
- The JTPA establishes a public/private partnership between government and the private sector by providing a major role for business in the direction and operation of JTPA programs. This is accomplished through the establishment of Private Industry Councils (PIC's) at the local level and through State Job Training Coordinating Councils (SJTCC) at the State level;
- The JTPA is a performance driven program, with clearly defined standards for measuring program effectiveness; with provisions for sanctions as well as incentives to improve program performance;
- The JTPA shifts primary responsibility and authority for the design and administration of the delivery system from the Federal Government to the Governors and the States.

The major JTPA training programs are authorized under three titles:

- Title II provides for a system of block grants to States to support local training and employment programs for the economically disadvantaged. States are responsible for further allocating the funds to service delivery areas in their States and for overseeing the planning and operation of local programs. Part B of this title also provides for a summer youth employment and training program.
- Title III of JTPA provides for a new program targeted on dislocated workers—experienced workers displaced from their regular employment by plant closings, technological change, foreign competition or other major economic disturbances.
- Title IV provides for limited activities to be continued under Federal direction such as those that involve interstate activities or that are special responsibilities of the Federal Government. These include the Job Corps, Indian and Native American programs, Migrant and Seasonal Farmworker programs, and such support activities as evaluation and technical assistance.

State and Local Programs

Title II-A provides for a system of block grants to States based on relative unemployment and number of disadvantaged persons.

The Governor makes further allocations to designated service delivery areas (SDA's), which generally are communities of at least 200,000 population or areas determined by the Governor. In PY 1984, 592 SDA's received a total of \$1.9 million for title II-A activities. During PY 1984, the JTPA served over 856,400 persons in the basic title II-A State and local programs. In terms of activity, 41 percent of enrollees were assigned to classroom training, 21 percent to on-the-job training, 20 percent to job search assistance activities, and 18 percent to other activities. During PY 1984, expenditures for training accounted for 74 percent of the total expenditures.

Data from the first full PY indicate that, of new participants entering JTPA, 94 percent were economically disadvantaged (the statute requires that 90 percent of those served must be economically disadvantaged). Youth 21 years of age and under accounted for 42 percent of all participants. Twenty-seven percent of the enrollees were school dropouts and 44 percent were receiving some form of public assistance.

Over 562,200 participants were terminated from title II-A programs during PY 1984. Of this number, an estimated 61 percent entered employment at the time of termination. The highest entered employment rate was for participants in on-the-job training with 78 percent becoming employed. Other entered employment rates by program activity were: Job search assistance, 77 percent; classroom training, 57 percent; and work experience, 43 percent. For participants entering employment, the average hourly wage was \$4.49.

Dislocated Worker Program

Title III of JTPA represents recognition of a problem of increasing concern in recent years—the plight of experienced workers who find themselves displaced through economic or technological change. Congress made available funds to initiate dislocated worker employment and training programs prior to the effective date of the basic JTPA. Thus, a special Emergency Jobs Bill made possible immediate operation of programs for dislocated workers in early 1983.

For PY 1984, \$223 million was appropriated. Seventy-five percent of the funds were allocated to the States for distribution by the Governors to address problems of dislocated workers within their States. The remaining 25 percent was reserved for distribution by the Secretary to the States to address special problems and needs. A total of \$222.5 million has been appropriated for PY 1985.

Of this amount, \$167.25 million has been allocated to the States by formula for distribution by the Governors. The remaining \$55.25 million is reserved for distribution by the Secretary to the States to address special problems and needs. With certain exceptions, where unemployment exceeds the national average, States are required to match the Federal grant with non-Federal contributions.

Dislocated worker programs are designed to provide on-the-job training, classroom training, job placement, and other necessary support services to enable dislocated workers to find new jobs, primarily in the private sector. Services may also be provided before lay-off when there is notice of plant closing.

Total enrollments under title III from July 1, 1984 through June 30, 1985, (the end of the first PY), numbered 178,000. Of 112,675 participants that terminated from the program, 66 percent entered employment. Data on the characteristics of the terminees indicate that 88 percent of the participants were unemployed at the time of enrollment and 50 percent were receiving unemployment compensation.

Summer Youth Program

Title II-B provides for a Summer Youth Employment Program (SYEP). This program gives economically disadvantaged youth employment opportunities and related training and educational services during the summer months. States and local service delivery areas received a total of \$824.6 million for the summer of 1984 and provided over 753,000 summer jobs for disadvantaged youth.

Job Corps

The Job Corps, authorized by title IV, provides a wide range of training, education, and support services, primarily in residential centers, for disadvantaged youth ages 16 to 21. During PY 1984 (July 1984-June 1985) the Job Corps operated 107 training centers at a cost of \$587 million. The program is being funded at \$617 million for PY 1985. These centers provided 39,141 service years and served approximately 57,400 new enrollees during PY 1984.

During this period, ETA implemented a pilot project to provide services to 22 to 24-year-olds at Job Corps centers; initiated a computer assisted instruction program; and tested several innovative education programs. These projects are scheduled to be evaluated during PY 1985 to determine their overall effectiveness. In addition, final decisions were made on changes in vocational offerings at centers, and refinements were made to competency

based vocational curricula. The Job Corps management information system was enhanced, and advanced career training programs were implemented at a number of centers.

The majority of Job Corps centers are 100 percent residential, but a number of centers have combined residential/nonresidential programs. Nonresidential enrollment during PY 1984 was 9.5 percent of the total.

Special Targeted Programs

Under title IV of JTPA, ETA continued to have responsibility for administering several national programs serving groups that the legislation identified as in need of special services because of the particular disadvantages they encounter in the labor market.

Under JTPA, the Indian and Native American Employment and Training Program continued to support a wide variety of training and employment services through grants to Indian Tribes, other Native American communities and various related organizations. During PY 1984, approximately 26,500 Indians and Native Americans were served at a cost of \$62.2 million; PY 1985 funding is at the \$62.2 million level. In terms of services, 31 percent received classroom training, 9 percent received on-the-job training, 30 percent were in work experience or community service employment, 1 percent were in tryout employment and 29 percent received various supportive services.

The Migrant and Seasonal Farmworker Program provides services to migrants and seasonal farmworkers, ranging from job training to emergency assistance, health and medical care, and nutritional services. During PY 1984, the program served 52,880 persons at a cost of \$65.5 million level. Over 8,400 received classroom training, 6,000 were placed in on-the-job training and 1,400 were placed in work experience positions.

Older Americans Act

The Senior Community Service Employment Program (SCSEP), authorized by title V of the Older Americans Act, provides subsidized part-time jobs in community service activities for low-income persons 55 or older. Grants are given to State and national organizations to develop part-time jobs which typically are for an average of 20 hours per week and are located in such facilities as hospitals, senior citizens centers, schools, and other public institutions. In PY 1984 the SCSEP provided employment for over 63,000 older persons through an appropriation of \$326 million.

Apprenticeship

Among ETA's major responsibilities is the promotion and fostering of an effective national apprenticeship system. This activity is carried out in cooperation with State apprenticeship agencies by providing technical assistance and advisory services to employers, employer associations and labor organizations.

During fiscal 1985, over 328,000 apprentices received training and over 94,000 new apprentices entered training. Female apprentices accounted for 7 percent of the total and 19 percent were members of minority groups. For several years, ETA has made special efforts, in cooperation with the Defense Department, to develop and expand apprenticeship in the Armed Services. In fiscal 1985, approximately 50,000 uniformed personnel were enrolled in apprenticeship programs conducted by the Army, Navy, and the Marine Corps. The Defense Department also sponsors apprenticeship programs for its civilian employees.

During the year, there were over 50,000 apprenticeship programs registered with ETA or the 31 State apprenticeship agencies, including over 2,500 new programs developed during the year. During the period, Federal staff conducted 1,600 compliance reviews of apprenticeship programs to assure compliance with the provisions of equal employment opportunity in apprenticeship regulations.

Efforts to improve the quality and effectiveness of apprenticeship programs were continued during the year. Over 1,800 quality assessments were made. Based on the results of these assessments, apprenticeship field staff assisted program sponsors in implementing such quality improvements as performance based training, revised and updated work processes, and improved related instructions.

Employment Service

The public employment service is a nationwide system providing services to individuals seeking employment and to employers seeking workers. The basic labor exchange system of the employment service provides job findings and placement service to job seekers and recruitment and referral service to employers with job vacancies. The system also facilitates the match of job seekers and employers within and among the States and performs basic work test activities for the States' unemployment compensation systems. The 1982 amendments to the Wagner-Peyser Act significantly expanded the role of the States in the planning and administration of the employment service system and changed the funding methodology for employment service activities. The activities are

financed through basic allotments to States and funds are distributed under a demographically based formula using civilian labor force and unemployment criteria.

The amendments (title V, Job Training Partnership Act P.L. 97-300) provided for transition from a fiscal year basis (October 1 through September 30) to a program year (PY) (July 1 through June 30) for State public employment service activities. During PY 1984 the conversion, and related procedural and administrative adjustments, were institutionalized.

During the year, work continued on updating the Dictionary of Occupational Titles (DOT), a basic reference for many employers, schools, and other personnel-related activities. Emphasis is on defining and analyzing occupations in high technology industries and on occupations impacted by technological change.

The employment service continued to have special responsibilities for administering the Targeted Jobs Tax Credit (TJTC) program. TJTC is an elective income tax credit that can be applied to the wages private employers pay to new employees in certain target groups. Employers hiring a member of the specified groups must obtain certification from a public employment service office in order to qualify for the credit. During the first three quarters of fiscal 1985 public employment service offices issued 442,000 certifications, an increase of 11.5 percent over the same period in fiscal 1984. The program, originally scheduled to expire at the end of 1984, has been extended through December 1985, by the Deficit Reduction Act of 1984.

The U.S. Employment Service and its affiliated State agencies administer a labor certification program required by the Immigration and Nationality Act. In fiscal 1984, approximately 31,000 applications for permanent and temporary labor certifications were processed with 25,000 applications certified for approval. In calendar year 1984, approximately 20,000 applications for jobs in temporary agricultural work, to be filled by foreign workers, were certified.

The Employers' National Job Service Committee (ENJSC) and more than 1,200 affiliated Job Service Employer Committees (JSEC) provided private sector leadership to assist the public employment service in establishing the new relationships authorized by JTPA. Over 20,000 employers participate in this volunteer program to improve services to employers and applicants by the State public employment service agencies.

The JTPA authorizes a nationwide computerized job bank program. The Interstate Job Bank computer tape-to-tape exchange of job opening information has grown rapidly to include approximate-

ly 9,800 job openings each week, with a turnover of about 10 percent weekly. The openings listed are those submitted by States as hard-to-fill locally, and are forwarded to over 20,000 locations each week for reference and applicant referral. During PY 1984 improved methods of transmitting the listings were piloted and revised ways to track and feedback results of referred resumes showed promise for further enhancements to provide easier participation by States.

The new Validity Generalization (VG) testing for identifying applicants' aptitudes for referral to employers has been recognized by many employers. Multiplant employers are urging State public employment services to adopt this method. Consequently, about half of the States are at present using this new technique in some form and in at least part of the States. Other States have indicated during PY 1984 their intentions to introduce in PY 1985 the VG method of General Occupational Aptitude testing for virtually all jobs.

The Work Incentive Program

The Work Incentive (WIN) Program provides training and employment services to applicants/recipients of Aid to Families with Dependent Children (AFDC). WIN is administered jointly by the Department of Labor and the Department of Health and Human Service (HHS). However, under the Omnibus Budget Reconciliation Act of 1981, States were given the option of conducting a demonstration program under which the WIN program could be administered solely by State welfare agencies under the direction of HHS. Some 23 States have elected to operate WIN demonstration programs.

Participants in WIN are from groups that experience particular disadvantages in the labor market. In the first three quarters of fiscal 1985, 80 percent of WIN participants were women; 60 percent were minorities; and 56 percent had less than a high school education. During the first three quarters of fiscal 1985, regular WIN programs in the 31 States remaining under joint DOL/HHS administration registered nearly 246,500 persons and assisted nearly 85,000 registrants to enter unsubsidized employment. Of those placed in jobs, about half earned enough at entry to leave the AFDC rolls; the remainder continued to receive assistance but at a reduced level. For the 31 States under the joint program, reduction in welfare grants as a result of the WIN program, amounted to \$179.5 million for the 9-month period. This estimate does not include savings from reduction in food stamps or medicaid.

Unemployment Compensation

Fiscal 1985 saw a continuation of the fiscal 1984 decline in unemployment compensation claims and a major improvement in the solvency of the State unemployment compensation programs.

During calendar year 1984, 19.6 million initial claims for unemployment benefits were filed with State Employment Security Agencies (ESAs), compared to 22.8 million initial claims filed in calendar year 1983, and 30.3 million in calendar year 1982. Weeks of unemployment compensated (weekly benefit payments) declined in calendar year 1984 to 103.6 million weeks of total unemployment compared to 145 million in calendar year 1983; and weeks of partial unemployment declined to 8.6 million compared to 10.3 million in calendar year 1983.

Legislative action during fiscal 1985 was limited to an amendment to the Federal Supplemental Compensation (FSC) Act, expiring in March 1985, to provide eligibility for claimants in active status to be extended for continuous weeks of unemployment until any previously established entitlement had been exhausted. This action concluded the FSC program, which had been initiated in September 1982, and revised and extended on 5 separate occasions.

The FSC action concluded a 4-year period of executive-congressional legislative activity in the Federal-State Unemployment Insurance Program. Among the major areas in which action occurred during the 1981-1985 period were the following:

- Comprehensive improvements in Federal and State financing of the costs of the system to ensure its continuing solvency.
- Reform of the Federal-State Extended Unemployment Compensation Act.
- Reform of the program of Unemployment Compensation for Ex-Servicemembers.
- Reform and restructuring of the program of Trade Adjustment Assistance, including a 2-year extension until September 30, 1985.
- Reduction of income thresholds for the application of income taxing on part of unemployment compensation benefit payments.
- Requiring that each State maintain a system of employer reports of wages paid to workers to be used as a source of information for assuring the validity of payments in Federally assisted benefit programs, including unemployment compensation.
- Encouraging and assisting States in the development of plans for short-time compensation (worksharing).

Improvement was reflected during fiscal 1985 in State benefit financing and repayment of loans from the Federal Unemployment Trust Fund (FUTA). These loans had peaked as of January 31, 1984, when 26 States had outstanding loans in an aggregate total amount of \$14 billion. By the end of fiscal 1984, the number of States had been reduced to 20 and the total amount of outstanding loans to \$9.7 billion (of which \$5.9 billion were interest free—taken out before April 1, 1982—and \$3.8 billion subject to interest).

During fiscal 1985, declining rates of unemployment and improved financing structures combined to permit many States to make voluntary loan repayments, in lieu of or in addition to recoveries occurring by way of reduced FUTA offset credit to employers in debtor States. Five States repaid their outstanding loans in full, reducing the number of States with unpaid loans to 15 as of August 31, 1985. The balance of outstanding loans was similarly reduced, to \$6.2 billion by the same date (\$4.8 billion interest free and \$1.4 billion interest bearing).

Monthly borrowings during fiscal 1985 ranged from a high of \$542.9 million in March 1985 to a low of \$76.8 million in August 1985. Positive balances of the 38 States not in debtor status as of August 31, 1985, aggregated to \$5.0 billion.

While weekly layoff payments under the Redwood Employee Protection Program ended at the end of fiscal 1984, an exception is provided for older workers: affected workers who have reached age 60 prior to October 1, 1984. For any such worker, entitlement continues until age 65. Preliminary data for fiscal 1985 indicates that during the year affected workers were paid benefits for 11,606 weeks for a total of \$3.0 million—an average payment of \$258. Severance payments, in lieu of entitlement to weekly payments, were made to 37 workers. Since its inception in May 1977, \$96.9 million has been paid to affected workers in weekly layoff benefits and severance payments.

Under the Disaster Unemployment Assistance Program (DUA), during fiscal 1985, 18 major disasters were declared in 15 States. Some 13,000 individuals received DUA benefits during the 10-month period ending July 31, 1985. Benefits totaled \$5.0 million, down from \$15.0 million in the same period of fiscal 1984.

The integrity of the unemployment compensation program continues to receive high priority by the Department of Labor and the SESA's under the Administration's efforts aimed at the reduction of fraud, waste and abuse in all income maintenances program. (Certain of the data in this section is the latest available information and is not necessarily within the limits of fiscal 1985.) During fiscal 1982, 1983, and 1984, additional funds were made

available to implement or enhance the automated systems used by SESA's to detect and recover benefit overpayment. The result of this investment for the first 2 fiscal years has shown a significant increase in the amount of benefit overpayments detected and recovered in most SESA's. Although data is not yet available to measure the effect of the fiscal 1984 additional funds for the model systems, it is expected that a similar trend will be realized. Programwide, in fiscal 1984, both detection and recovery of benefit overpayments increased over prior levels. During fiscal 1984, a pilot test of an unemployment compensation model prosecution program began in Philadelphia and the State of Arizona. This 2-year project is being conducted to determine whether the model approach is an effective, cost-beneficial tool for SESA's to use under State laws to deal with unemployment compensation fraud and whether funding an organized and specific effort results in increased convictions and restitution of benefit funds.

The development of a comprehensive internal security program in unemployment compensation operations continues to receive attention. Risk analyses have been completed in 45 SESA's, and the remaining SESA's plan on completing a risk analysis in fiscal 1986. These analyses identify unemployment compensation program vulnerabilities and establish safeguards to eliminate or reduce the vulnerabilities identified. A comprehensive training program for SESA's staff has been developed with training in internal investigative techniques, fraud and financial management, and computer fraud. New initiatives for fiscal 1986 will be directed to implementing a revised internal security reporting system and to conducting on-site monitoring of the SESA's unemployment compensation internal security programs.

Continued emphasis was placed on increasing the degree of automation of SESA benefit payment, tax and payment control functions. This effort will improve the efficiency of the unemployment compensation system, reduce the level of fraud and abuse, and assist in the collection of revenues and overpayment. During fiscal 1985, \$20 million was awarded to 27 SESA's to fund unemployment compensation automation projects. These projects were for replacement of obsolete hardware and software. In fiscal 1986, additional automation grants will be awarded to SESA's to improve the automation capabilities of their unemployment compensation programs.

The Secretary of Labor has directed the Department to engage in a wide-ranging policy review to develop an assessment system designed to improve the accuracy and timeliness of unemployment compensation revenue and payment activities. Plans call for im-

plementation of the proposed Quality Control design or a modified assessment system at the completion of this review. The purpose of this review was to explore the basic policy decisions forming the frame work of such a system and to ensure the full participation of the many groups involved in unemployment compensation administration in this process. The review solicited viewpoints, suggestions and alternative approaches from Governors, employers, organized labor and other interested groups.

The assessment system will improve the accuracy and timeliness of unemployment compensation revenue and payment activities. Experience gained through the Random Audit program and other available information indicates that substantial dollar losses from the Unemployment Compensation Trust Fund have occurred through (1) the overpayment of unemployment compensation benefits, (2) undercollection of employer unemployment compensation taxes, and (3) lost interest on revenues. The Random Audit program has provided preliminary data on the size of the benefit overpayment problem. Under this voluntary program, 46 States have selected a small sample of intrastate claims paid each week and determined through field investigation the accuracy of the payment. The results show that on a nationwide basis, a substantial amount of unemployment compensation benefits may be paid in error. Such error rates are ten times greater than previously believed based on standard reporting and represent substantial sums in a multibillion dollar program such as unemployment compensation.

Although only partial data is available on the magnitude of the revenue problem, estimated revenue losses due to delinquent employer taxes may be considerable. Reports issued by the Office of the Inspector General estimate that lost interest on revenues due to untimely deposit of employer taxes and early withdrawal of benefit funds add additional millions of dollars to this level.

An assessment system to improve the accuracy and timeliness of unemployment compensation revenue and payment activities will give the Department the means to deal effectively with unemployment compensation program performance and quality issues. It will establish a means for the Secretary to carry out his oversight responsibilities.

Trade Adjustment Assistance

Under the Trade Act of 1974, ETA conducts fact finding investigations on worker petitions for trade adjustment assistance (TAA) benefits. Trade-impacted workers certified as eligible to apply for TAA may receive additional weeks of unemployment benefits,

training, counseling, job search and relocation payments. The TAA provisions were extended through September 30, 1985, by the International Coffee Agreement Amendments Act of 1983, and through November 14, 1985, by the Emergency Extension Act of 1985. The Deficit Reduction Act of 1984 further amended the Trade Act, effective July 18, 1984, by increasing the maximum amount for job search and relocation allowances from \$600 to \$800, and by allowing for workers whose entry into training was delayed for administrative reasons to collect 26 additional weeks of trade readjustment allowances (TRA).

Eight hundred and forty-six (846) new worker TAA petitions were filed with the Department during fiscal 1985, an increase of 68 percent over the previous fiscal year figure.

In fiscal 1985, about 58,100 workers were certified as eligible to receive TAA benefits, with the majority of workers located in the apparel, footwear, and textile industries, compared to 13,500 workers mostly in the steel, footwear, and electronics industries in the previous fiscal year. TAA data for the first 9 months of fiscal 1985 show that 11,531 workers adversely affected by imports received trade readjustment allowances (TRA) first payments. A total of \$22.66 million was paid in TRA benefits during the same period. In addition, 596 workers received a total of \$138,000 in job search allowances, and 793 workers received a total of \$1.05 million in relocation allowances.

Financial Management

A basic objective of ETA is the resolution of all outstanding audits and the timely processing of contract and grant closeout actions. During fiscal 1985, ETA issued final determinations for approximately 450 audits. Included in this activity were the first comprehensive audits of unemployment compensation grants in the program's history.

At the end of fiscal 1985, the phasedown and closeout of the CETA program is 95 percent complete. All but three of the remaining master plans and annual plan subparts are awaiting the outcome of administrative appeals. The closeouts of the remaining three are delayed by other administrative problems. Approximately 400 contracts and grants funded by the national office were closed during fiscal 1985. Nearly 650 additional closeout actions remain pending for reasons such as appeals of contract or grant officer determinations, unresolved audit issues, pending debt collection actions and pending establishment of the indirect rate. Implementing guidelines have been developed and distributed relating

to the resolution of JTPA audits and the continuation of closeout activity, most of which has been centralized in the ETA national office.

During fiscal 1985 ETA collected approximately \$24 million of the debt established through the audit resolution process. More than \$18 million of this amount was in cash collections. Also, more than \$12 million of debt was referred to the Department of Justice and the General Accounting Office for litigation or termination.

Over 500 preaward reviews were completed on potential ETA contractors or grantees. Twenty on-site investigations were conducted to determine whether the grantees/contractors were in compliance with the legislative and regulatory requirements applicable to them. And, over 300 incidents of alleged fraud, abuse, or other criminal activity were reported through the ETA Incident Report system or the GAO/OIG Hotline system. Corrective action was initiated where appropriate.

In an effort to strengthen the integrity of ETA programs, on-site reviews were conducted independent of program office activities on a sample of 21 national office programs. These reviews focused on program operations and financial systems. The primary issues identified during these reviews were misclassification of costs, lack of cost allocation plans, inadequate documentation for verification of participant eligibility and failure to follow government travel regulations. The appropriate program office initiated requests for corrective action where necessary.

Policy and Planning

In fiscal 1985, the policy and planning activities focused on the identification of emerging issues as the new JTPA training and employment system matured, and support of ETA's legislative responsibilities.

Although JTPA proved successful overall, during the first 2 years a number of issues surfaced which indicated the need for closer examination. These issues were the subjects of a number of policy papers including: studies of program data and evaluation findings to determine the extent to which the program is serving its intended target group; reviews of evaluation studies to assess the extent and potential for further coordination of training and employment programs with related programs at the State and local level; and studies of the extent and adequacy of services to youth under the new system.

Other analyses included a review of the Trade Adjustment Assistance program in preparation for Congressional oversight

hearings on the impact of trade and potential forms of assistance for workers in the steel and copper industries; and several analyses of foreign programs and strategies for addressing unemployment.

Planning and policy staff implemented and coordinated a system of goals and objectives to focus ETA's efforts on areas of highest priority. Major goals included development of systems to administer JTPA and efforts to assure the integrity of ETA efforts. Staff also prepared the annual Employment and Training Report of the Secretary for submission to Congress.

ETA's regulatory activities including preparation of the Annual Regulatory Plan and the Semi-Annual Regulatory Agenda received direction and guidance from the policy and planning unit. Also all ETA proposed regulations were reviewed for consistency with the law and administration policy.

ETA participated in congressional oversight hearings on the Job Training Partnership Act, the Job Corps, Trade Adjustment Assistance, and displaced older workers. ETA also developed the Department's position on numerous legislative proposals, including those concerning the Federal Supplemental Compensation (FSC) Program, Trade Adjustment Assistance, and proposed youth legislation

Research and Evaluation

Work continued on ETA studies which provided the basis for briefs and reports in accordance with DOL's oversight responsibilities. The second phase report of a 2-year, 3-phase process study on JTPA implementation indicated that JTPA is proceeding as anticipated according to the legislation. Data from the Job Training Longitudinal Survey (JTLS), which is the primary vehicle for measuring the impact of the Act, showed that JTPA continues to serve the intended clientele (over 90 percent economically disadvantaged in title II-A), with the intended service (training). In addition, ETA reported that the first phase of a two-phase study of the early implementation and effects of the JTPA Wagner-Peyser amendments revealed that in most States the amendments have not yet had a major impact on ES-JTPA relationships.

At the same time, ETA adhered to its long standing commitment to research basic labor market issues. ETA continued, for instance, to track the working life of various demographic groups through the National Longitudinal Survey (NLS), a survey begun in 1966. In addition, nationally administered pilot, demonstration, and multi-State programs provided training and other employment related services to special-needs groups, such as the handicapped, youth, and persons of limited English-speaking ability.

Performance Standards Management

The issuance of an updated performance standards adjustment model for adult and youth programs and the continued assessment of JTPA implementation and impact were important fiscal 1985 activities.

Performance standards for title II, III, and Job Corps remained unchanged, with an emphasis on the refinement and updating of adjustment models to assist States in setting State and local standards.

ETA also continued to provide ongoing training and technical assistance through various technical assistance guides and customized training for State and local staff operating title II programs.

Specific accomplishments in fiscal 1985 included:

- Revision of an optional methodology to assist Governors in adjusting local standards.
- Development of adjustment models for Job Corps Center standards.
- Development of a pilot adjustment model for Indian program standards.

During fiscal 1985, research was undertaken to identify additional performance measures for youth, welfare reduction and postprogram measures for programs serving adults, welfare recipients and dislocated workers.

Federal Job Training Partnership Act Oversight

JTPA provides for concurrent oversight activities initiated by local, State, and Federal entities in the job training system. The exercise of oversight responsibilities at the local, State, and Federal levels assesses how the system is performing and the extent to which it complies with the statutory requirements (i.e., compliance reviews). The major emphasis of ETA oversight is to review the development and effectiveness of State systems to plan, manage, direct and assess programs within the State. A sample of SDA's are also reviewed to determine whether State systems are functioning as intended. ETA's oversight strategy includes special studies and impact evaluation mandated by Section 454 of JTPA as well as analysis of a limited number of reported items for the States. Surveys will be conducted as needed. The ETA regional offices have primary responsibility for conducting JTPA onsite compliance reviews in States.

ETA compliance review activities have been designed around three core systems: Integrity, Employment and Training, and Labor

Exchange. In PY 1984, regional office staff conducted 1,400 reviews in 18 separate elements under the core system reflecting key requirements in JTPA.

Integrity Systems

Financial Management
Cash Management
Procurement Management
Grievance Procedures

*Employment and
Training Systems*

Performance Standards
Eligibility Determination
State Monitoring
Services to Target Groups
State Job Training
Coordinating Council
Certification of Local
PIC's
Local Plan Approval
Program Plan Approval
Program Limitations
Other Statewide Programs
Summer Youth Program
Title III Formula
Dislocated Worker
Program

*Labor Exchange
Systems*

Wagner-Peyser Base Grant
Plan
Wagner-Peyser Reimbursable
Grants

Compliance reviews are conducted using ETA developed compliance review guides and are generally scheduled on an annual basis. Review findings are forwarded to the Grant Officer and a copy is provided to the State. If compliance issues are found during a review a recommendation is made that the State take the actions necessary to assure compliance with Federal requirements. States have the responsibility for determining the substance of corrective actions.

ETA has implemented its plans for compliance review in PY 1985. ETA will continue to conduct reviews under the three core systems using the same basic framework as in PY 1984. Most reviews occur between July 1, 1985 and March 30, 1986.

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Bureau of Labor Statistics

Celebration of the Bureau's centennial year came to a close with two final events: A reception on January 22—jointly sponsored by BLS and the Joint Economic Committee of the Congress—to mark the anniversary of the swearing in of the Bureau's first Commissioner, Carroll D. Wright, in January 1885; and the release of a historical volume, *The First Hundred Years of the Bureau of Labor Statistics*. Secretary Brock hosted a reception for members of the press and the senior staff of the Department to introduce this new book. Released on Labor Day, it describes the origins not only of the Bureau but of the Department itself. Beginning as the Bureau of Labor, BLS preceded the Department by nearly three decades. The history also covers the accomplishments of each of the 10 BLS commissioners so far and reports on the various pressures for change in BLS programs—pressures generated by two world wars, the Great Depression, and recurring recessions—and on political controversies involving the Bureau over the years.

Program Developments

The first year of the Bureau's second century of operation was marked by strong external demand for further program development despite an atmosphere of fiscal restraint prevailing in both the executive and legislative branches of the Government. The Office of Management and Budget (OMB) directed the Bureau to:

- Expand its survey of professional, administrative, technical, and clerical (PATC) salaries of workers in white-collar occupations in private industry. The sample will be enlarged to reflect smaller establishments, more service industries, and State and local governments. This expansion was recommended by a task force established by the Cabinet Council on Management and Administration. Its recommendations, approved by the Council and subsequently by the President, are consistent with previous recommendations made in 1975 and 1977 and more recently by the General Accounting Office and the Presidentially appointed Grace Commission. The PATC expansion is being implemented in stages over 3 years, at first on a reimbursable basis with resources provided through an assessment on other Federal agencies—until Congress appropriates the required funds.
- Prepare to implement a new revision of the Standard Industrial Classification System. The last complete revision of the governmentwide coding system was in 1972. Plans for a

substantial revision in 1982 were foregone because of budgetary considerations. Unwilling to wait longer, OMB reactivated the revision process this year and scheduled it for implementation in fiscal year 1987. During this year, BLS not only worked closely with the Technical Committee on Industrial Classification set up by OMB to handle the revision activities but also prepared to participate in this government-wide revision.

In 1985, Congress augmented the Bureau's appropriation to cover two new program initiatives in which it was interested:

- A survey of permanent mass layoffs and plant closings, for which \$5 million was added to the Bureau's budget request. The Bureau conducted pilot tests in eight States this year to determine how to proceed. Plans call for expansion to all States in the next two years.
- An expansion of data for the rapidly growing services sector of the economy, for which data are presently sparse. Congress appropriated an additional \$1 million beyond the fiscal 1985 request. The Bureau began developmental work this year and, if this work is successful, many new series in the price, wage, and productivity areas will be produced in the near future.

Otherwise, the production of the Bureau's regular statistical series continued during the year without event.

Two new uses of the Consumer Price Index developed during this year, both of which served to emphasize even further the need for constant attention to the quality and security of this widely used measure.

- Starting in 1985, the Economic Recovery Tax Act, passed in 1981, required adjustments in personal income tax brackets based on changes in the CPI for All Urban Consumers (CPI-U) over the two preceding years. This adjustment is intended to offset the effect of inflation on taxpayer liability, sometimes called bracket creep. OMB estimated that this adjustment would reduce annual tax revenues in 1986 by about \$1.8 billion for each 1-percent increase in the CPI.
- Starting in August, the Commodity Futures Trading Commission sanctioned the trading of futures contracts on the CPI for Urban Wage Earners and Clerical Workers (CPI-W). This trading—authorized in response to a petition from the Coffee, Sugar, and Cocoa Exchange—is intended to enable purchasers to hedge their resources against inflation.

Major improvements were made during the year in several macroeconomic indicators. They included:

- **The Current Population Survey.** The redesign of the sample—under way for several years—was fully implemented. It improved both sample efficiency and quality of the data, particularly at the subnational level. Further research plans were developed jointly with the Bureau of the Census which focus on (a) continuing improvements in the concept and methodology of this survey and (b) taking full advantage of technological advances in data collection.
- **Current Employment Statistics (CES).** Technological advances continued in this joint Federal/State program. This year these included the completion of tests on computer-assisted data collection and the electronic transmission of data, which further improved response rates.

Controversy developed during the year over the calculation of one of the series in the Current Employment Statistics program—the average hourly earnings (AHE) series for the aerospace industry, which has used the series for some time to escalate contract sales of equipment to the Defense Department and private airlines. Over the past few years, contract settlements have provided for lump-sum payments to workers in lieu of wage increases. By definition, such sums were excluded from the AHE series. The Bureau offered to publish a supplementary series that would include the lump-sum payments. The States, which collect the data, were instructed to begin collecting this information.

- **Local area unemployment statistics.** An improved methodology—based on econometric models—for estimating these rates was developed and tested. The objective was to seek ways to reduce persistent, nonrandom errors that substantially reduce the usefulness of these estimates as an equitable means of allocating Federal funds among States and areas. The results suggested that it may be possible to develop a new estimating system but that further research was needed.
- **The Producer Price Index (PPI).** The massive, first-time revision of the series of measures was substantially completed. Under way for several years, this revision is now yielding data that are of higher quality, improved timeliness, and in greater detail than ever before. It has both transformed the concept—in line with several outside expert recommendations—from a simple wholesale measure to a state-of-processing set of measures, and greatly extended the product detail from about one-quarter of all mining and manufacturing industries at the 4-digit Standard Industrial Classification level to complete coverage. The total number of price quotations was increased nearly

tenfold—from fewer than 10,000 quotes to 90,000. The actual number of indexes increased from about 3,000 to about 8,000. Other improvements that significantly improved the quality of these measures include probability sampling, more consistency in pricing, and the elimination of some double counting.

The expansion of detail for the producer price series was made possible through the development of an integrated computer system that reviews the incoming schedules with an optical scanner prior to data entry and then edits the data after entry through a new system, APPRISE. This system flags data anomalies for staff review for possible errors right on the computer screen. This screen editing eliminates shuttling of machine printouts back and forth among offices to seek answers to data problems.

The combination of advance technology and staff creativeness has also resulted in more current PPI data. For example, the 1-month time lag in the data for refined petroleum products was eliminated. This improvement required—in addition to the extensive and improved field work to collect the data 1 month sooner—adjustments to the complex seasonal calculations that were affected by the change in months covered and reestimates of the historical series to reflect the new seasonal factors.

- The Consumer Price Index. The multiyear revision program continued on schedule. The new measure is scheduled for publication with the data for January 1987.
- The Consumer Expenditure Survey. This two-part survey—an interview with a household member and a diary record—provides the data from which the market basket for the CPI is drawn. This year, data from both the diary and interview components were published for 1982–83.
- The Occupational Injury and Illness Survey. A draft of new guidelines designed to improve employer recordkeeping of illnesses and injuries was completed and published in the Federal Register in July. Many comments were received from both the business and labor communities. A final decision on the guidelines will be made within the next few months.

In response to Congressional concerns over the quality of the Bureau's occupational injury and illness statistics, including underreporting, the Bureau, through the Department of Labor's Office of Procurement, contracted with the National Academy of Sciences' Committee on National Statistics to set up a panel to study the accuracy and quality of these data and recommend ways to improve both. In addition, the Bureau has initiated an onsite case study

review of employer recordkeeping practices and procedures to identify reporting problems. Plans call for visits to about 40 establishments.

The following programs were strengthened during the year:

- Data for the service-producing sector. In July 1985, for the first time, the Bureau provided in its Employment Cost Index (ECI) estimates of quarterly compensation changes for workers in the following service-producing industries: Transportation; public utilities, wholesale and retail trade; finance, insurance, and real estate; and services. Additional ECI indexes will be introduced over the next 4 years. Two new productivity indexes for this sector were published. In the price area, developmental work was undertaken on measurement problems for new producer and international measures.
- Collective bargaining settlements. The Bureau's series on the size of major collective bargaining settlements in State and local governments was expanded to cover bargaining units with 1,000 workers or more, which makes it comparable to the coverage of the Bureau's series on private-sector bargaining units.
- Productivity measures. Output per employee hour measures were completed for additional industries, and multifactor productivity measures for major sectors of the economy were further refined and extended. Also, work on measures for specific industries such as steel, autos, utilities, and footwear was undertaken.

Employment and Unemployment Statistics

A multiyear sample expansion in the establishment-based Current Employment Statistics survey was completed. The expansion was concentrated among small firms in the service-producing sector in order to better reflect the source of the Nation's job growth.

The Bureau continued test and development activities to modernize the establishment survey. Long-term studies of alternative sample designs and estimation techniques continued, as did research on estimating cell structures for States. Tests continued on the application of computer-assisted survey techniques toward the goals of improving data quality and timeliness in BLS Federal/State cooperative programs. A study was undertaken to analyze the administrative process of identifying new business formations—births—through the unemployment insurance system for more rapid inclusion of such establishments in the employment

survey so as to better understand their role in the economy. The development of a microcomputer environment for the local area unemployment statistics program continued.

In coordination with the Bureau of the Census and a consortium of Federal agencies, the redesigned Current Population Survey was fully implemented. The introduction of a new sample incorporating information from the 1980 Census of Population and new estimation procedures should greatly improve the sample efficiency.

The Bureau continued to meet the labor force data needs of the press, business, academia, Congress, and government agencies. Analyses issued included the regular monthly summaries of employment and unemployment, as well as the semiannual and annual reporting, and quarterly reports on weekly earnings, women in the labor force, and minorities. Special analytical projects resulted in 27 *Monthly Labor Review* articles, reports, and book reviews. The Bureau published its fourth annual report examining the impact of employment problems on employment and low income as required by the Job Training Partnership Act. The Bureau designed and conducted, through the Bureau of the Census, a special survey to obtain data on new trends in work schedules. Data from a special survey on displaced workers were tabulated, analyzed, and disseminated, while steps were taken to repeat the survey in January 1986.

The Bureau completed the second year of cooperative agreements for labor market information statistical programs with 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The consolidation of technical, funding, and managerial responsibility for the Current Employment Statistics, Occupational Employment Statistics, and Local Area Unemployment Statistics programs has yielded significant improvements in data quality and timeliness. Special attention is being paid to conformance to BLS technical standards. The Bureau developed cooperative agreements for fiscal 1986 to include, in addition, provision for the insured employment and wages report program, which will be transferred to the Bureau from the Employment and Training Administration in fiscal 1986.

The Bureau developed industry-occupational employment estimates for manufacturing industries, based on data collected through the Occupational Employment Statistics (OES) survey of transportation, communications, public utilities, wholesale and retail trade, education, and State and local governments.

Objectives of the employment and wages program (ES-202) continued to focus on improving the quality and efficiency of the operations of cooperating State agencies. All agencies are now reporting 4-digit Standard Industrial Classification (SIC) data at

the county level. Timeliness has also improved. The new county-level macroedit was implemented as well as a new data base to support the system.

The 1983 *Employment and Wages* bulletin was issued in addition to news releases on annual average pay for Metropolitan Statistical Areas and by State and industry for 1983 and 1984. The Employment and Training Administration used ES-202 data in their determination of minimum pay for alien farm workers, for setting performance standards under the Job Training Partnership Act, and in job placement centers. The Health Care Financing Administration continued to use ES-202 data to construct area wage indexes for reimbursing hospitals, skilled nursing facilities, and other types of health facilities.

Employment identification numbers in each State's unemployment insurance name and address files were provided for the first time under the universe maintenance operations program. In addition, an integrated system of editing and updating the BLS universe file was put in place. During the year, considerable staff time was expended on the interagency effort to revise the *Standard Industrial Classification Manual*, which will culminate in the SIC revision in 1987.

The Bureau continued its planning and developmental efforts in the Permanent Mass Layoff and Plant Closing (PMLPC) program, although no progress was made in the first half of fiscal 1985. Work halted as a result of: (1) Congressional deferral of fiscal 1985 funding until the second quarter of fiscal 1985, and (2) the inclusion of this funding in an Administration rescission request. Congress failed to act upon the request, thereby restoring the availability of the \$5 million funding level to the program in April 1985.

During fiscal 1985, five States completed significant developmental work and submitted test data to the Bureau, which are currently being reviewed for quality assurance and the meeting of program specifications and guidelines. Three States will continue testing and other developmental activities with a target date of midfiscal 1986 for test data submission to BLS.

Cooperative agreements for the development and testing of the Permanent Mass Layoff and Plant Closing program were negotiated and signed with 32 States and the District of Columbia. Negotiations with the remaining 10 States are continuing. Cooperative agreements providing for regular, ongoing production of data will be negotiated with the eight pilot States.

The Bureau continued to meet the needs of various segments of the population for local labor force data by providing monthly summaries of employment and unemployment.

Research continued on the development of regression equations to replace the current methodology used in the estimation of local area unemployment statistics. Results of the research efforts have been provided to State employment security agencies for simulation and further review. Evaluation of the research has also been solicited from an outside panel of experts. In the interim, efforts to improve individual components of the current methodology were completed, and research results were delivered to State agencies for additional review, simulation, and comment.

Prices and Living Conditions

During 1985, the revision of the Consumer Price Index continued on a schedule which will lead to the publication of a revised index for January 1987. In addition, the rental equivalence method for measuring price change for homeownership was introduced into the CPI for Urban Wage Earners and Clerical Workers.

The revision of the Producer Price Index continued also. New indexes representing 103 additional industries in the mining and manufacturing sectors of the economy were published, and a program of regular resampling of the revised indexes was begun.

The International Price program continued regular publication of price indexes covering 100 percent of the value of imported and exported products, and the Consumer Expenditure Survey program conducted a major test to improve the responses of its Diary Survey—a survey used to estimate expenditures for small, frequently purchased items.

An initiative was begun for both the International and Producer Price Index programs to expand coverage to the services sector. Several analyses were completed which suggested an efficient strategy for expanding index coverage.

Wages and Industrial Relations

The Bureau began publication of additional series for service-producing industries in the Employment Cost Index (ECI), as part of a governmentwide initiative to provide more data for this increasingly important sector of the economy. In July 1985, wage and compensation changes for both transportation and public utilities were published for the first time. Also published for the first time were compensation changes for trade, finance, insurance,

and real estate, and for service industries. Plans were made to begin publishing wage and compensation changes for health services in both the private sector and in State and local governments. The quality of the Employment Cost Index was enhanced through a sample replacement effort that substantially strengthened the sample in transportation and public utilities, trade, and manufacturing. An article describing plans to introduce 1980 industrial and occupational employment weights (from the Census of Population and Housing) in June 1986 appeared in the June 1985 *Monthly Labor Review*. Work was nearly complete on the first part of a new wage data entry system designed to improve regional office productivity.

The annual survey of Professional, Administrative, Technical, and Clerical Pay (PATC) was delivered on schedule for use in the Federal pay comparability process. A December 1984 *Monthly Labor Review* article described how individual pay rates are determined, and many special tabulations were prepared for research purposes at the request of the Office of Personnel Management and the present Administration to improve the PATC survey. Over the next 3 years, the Bureau will be expanding the survey to include small establishments, service industries not now studied, and State and local governments.

The annual Employee Benefits Survey (EBS) of paid leave and employee insurance and pension plans in medium and large firms was conducted with expanded inquiry into emerging and rapidly changing provisions and practices. The benefits survey, done in conjunction with the PATC survey, provides a unique source of comprehensive data on detailed characteristics of employee benefit plans—leave, retirement and capital accumulation, and a variety of insurance—in private industry. The Bureau published a bulletin including an analysis of benefit trends since 1979, the first survey year. This program produced three *Monthly Labor Review* articles during the year—on short-term disability, life insurance for older workers, and income replacement rates in private pension plans.

Area wage surveys in 70 metropolitan areas were conducted under the regular program of occupational wage surveys. In 24 of the areas studied, information was collected for the first time on the incidence of formal provisions for supplementary unemployment benefits; severance pay; cost-of-living adjustments; and paid leave for personal reasons, jury duty, funerals, and military duty. In addition, new job descriptions for the occupations of word processor and material handling laborer were introduced into these 24 areas.

Planning was begun for the redesign of the Area Wage Survey program to reflect new area definitions developed by the Office

of Management and Budget and employment changes from the 1980 Census of Population and Housing. Beginning in January 1987, the program will survey 90 areas, instead of 70, to reflect a more representative market basket of labor areas. The 90 areas will include the 32 largest areas to be surveyed annually, and 58 smaller areas, surveyed biennially.

Under contract to the Employment Standards Administration (ESA), 94 area wage surveys and 4 special industry wage surveys were conducted for use in administering the Service Contract Act. Also for ESA, analysis of a test survey of wages and employee benefits in construction was completed, and data collection was begun for surveys of forestry and logging in 4 States.

Seven industry wage surveys were conducted this year, in line with a more streamlined program and a previously reduced budget level. Timeliness of the final reports on the surveys improved dramatically, with publication lags dropping an average of 3 months. Work on measuring variances of the estimates continued; a formula has been tested on a survey of hotels and motels and will be extended to other industry surveys. Data collection for the banking industry survey was successfully coordinated with area wage surveys during calendar year 1985 in an attempt to increase operational efficiency; to date, area reports have been issued 1 to 4 months after the survey reference dates.

The Bureau, under contract with the Department of Defense, compiled universes and selected samples for approximately 170 occupational wage surveys in 1985 for the Federal Wage System (FWS).

Data on the size of wage and compensation adjustments in major collective bargaining contract settlements (covering 1,000 or more workers) in private industry were published each quarter. Similar data were issued semiannually for State and local governments. With publication of data for 1984 in February 1985, the scope of the government series was expanded from contracts covering 5,000 or more workers to those covering 1,000 or more, matching the scope of the private industry series. A detailed analysis of negotiated wage and benefit adjustments during 1984 was published for private industry and State and local governments.

The 1985 bargaining calendar was issued, providing data on major contracts scheduled to expire or subject to reopening during the year. The bargaining calendar was enhanced with the inclusion, for the first time, of data for State and local government bargaining. An analysis of bargaining activity slated for 1985 was published in the January 1985 *Monthly Labor Review*. It examined key bargaining situations scheduled for the year, provided

data on wage changes deferred to 1985 from settlements reached in earlier years, and gave information on potential cost-of-living adjustments.

Changes in labor organization membership among employed wage and salary workers between 1980 and 1984 were analyzed in an article in the February 1985 *Monthly Labor Review*.

Current Wage Developments was published each month. It highlighted key events in labor-management relations and provided details of wage and benefit changes in individual major bargaining situations. It also contained monthly statistics on major work stoppages, listings of expiring agreements, and extensive data on changes in employee compensation in the nonagricultural economy.

Productivity and Technology

BLS further strengthened and expanded the program of measurement and analysis of productivity and technology—topics of substantial public interest. Productivity measures are widely regarded as a major indicator of U.S. economic progress, and the Bureau refined and extended the series of published measures to provide a broader scope of coverage.

The number of industries for which BLS publishes labor productivity measures was expanded. The Bureau introduced measures for the following industries: Wood kitchen cabinets, internal combustion engines, machine tool accessories, and refrigeration and air-conditioning. A total of 133 separate productivity measures are now issued for industries in the manufacturing, mining, transportation, trade, communication, and service sectors of the economy. In addition, a chartbook on trends in manufacturing containing data on productivity and related economic indicators was published.

The Bureau also made progress in measuring productivity in the government sector. The productivity measures for the Federal Government were updated to cover fiscal year 1983. These measures currently cover fiscal years 1967 to 1983 for 28 functional groupings of Federal agencies, representing 65 percent of the Federal civilian work force. In addition, measures for several State and local government activities were updated.

The multifactor productivity measures published for major sectors of the economy advance a major BLS effort to expand official productivity measures to take account of the role of capital equipment in changes in U.S. labor productivity. First introduced in fiscal 1983, considerable effort has been made over the past year to refine and extend these key measures. In addition, at the industry level, a bulletin containing revised and updated multifactor

measures for steel and autos was prepared, and developmental work on a multifactor measure for the footwear industry was completed.

Studies are under way to assess factors that affect productivity movements, including the impact of research and development expenditures, changes in labor force composition, changes in capacity utilization, changes in factor prices and depreciation schedules, and changes in the relationship of hours worked to hours paid.

In the international area, the Bureau updated trends in manufacturing productivity and labor costs for 12 countries and continued research toward the development of multifactor productivity measures for Germany and Japan. A paper on alternative measures of capital inputs in Japanese manufacturing was presented at a major conference. The measures of comparative levels of hourly compensation costs for production workers in 34 countries and 36 manufacturing industries and the series on international comparisons of labor force, employment, and unemployment in 10 industrial countries were also updated. These measures provide insights into the changing competitive position of the United States.

In response to substantial public interest, the Bureau continued to assess the employment implications of automation and other technological changes. Reports appraising the impact of major technological changes on productivity, employment, and occupational requirements over the next 10 years were prepared for four additional major American industries—textiles, paper and paperboard, steel, and motor vehicles.

Economic Growth and Employment Projections

During fiscal 1985, labor force, economic, and industry and occupational employment projections were prepared for the 1984-95 period. The 1986-87 edition of the *Occupational Outlook Handbook* also was prepared. An analysis of how changes in occupational structure have affected the earnings distribution of individuals was published in the *Monthly Labor Review*. The article, "The Shrinking Middle Class: Myth or Reality?," addressed public concern about the supposed decline of middle-income earners. *How Workers Get Their Training*, Bulletin 2226, was published. Data in the bulletin presented the proportion of workers by detailed occupation who indicated they needed specific skills or training to obtain their current job. For those who indicated they needed training, data were provided on the type of training taken.

Several special analyses were completed and published in the *Occupational Outlook Quarterly* that focused on the relationship of technological change and jobs. Among these were articles on career opportunities related to lasers, fiber optics, and biotechnology, and the impact of computer-aided design and office automation on job opportunities. Articles were also published in the *Quarterly* that discussed job opportunities in large, fast-growing service industries, including health services, retail trade, and business services.

Occupational Safety and Health Statistics

The BLS occupational safety and health statistical program includes the Annual Survey of Occupational Injuries and Illnesses, the Supplementary Data System (SDS), the Work Injury Report (WIR) surveys, and injury and illness recordkeeping. Program activities are conducted through Federal-State cooperation.

Annual survey. In November 1984, BLS issued a news release on national estimates of incidence rates and numbers of occupational injuries and illnesses by industry for calendar year 1983. More detailed statistics by industry and size of establishment were published in a bulletin in June 1985. Occupational fatality estimates and causal characteristics appeared in an article in the September 1985 *Monthly Labor Review*. Individual State estimates for 1983 were produced by 39 States.

The occupational injury and illness data were added to the Bureau's LABSTAT data base for easy access for research and analysis.

In February 1985, about 280,000 employers nationwide were mailed survey forms to provide their 1984 data. Annual survey data have multiple uses: Trend analysis, interindustry comparisons, eligibility for voluntary compliance, inspection scheduling and targeting by the Occupational Safety and Health Administration and the States, monitoring of State safety and health programs, and public awareness of workplace safety and health.

Supplementary Data System (SDS). In fiscal 1985, 32 States participated in the SDS, which provides detailed data on the characteristics of work injuries and illnesses based on State workers' compensation records. Microdata files for 1983, which include records for over 1.2 million cases, are available from the National Technical Information Service (NTIS). Standard Supplementary Data System tabulations for 1983, showing distributions of occupational injuries and illnesses by industry and occupation, are being prepared and will also be available through NTIS.

No data will be available for 1982 or 1984 from either BLS or NTIS but may be available from participating States. The data identify the nature and source of workplace injuries and illnesses, part(s) of body affected, type of accident or exposure, and other characteristics not available from the annual survey, and are used to focus on special problem areas, such as back injuries.

Work Injury Reports (WIR). This survey program obtains detailed accident information directly from injured employees. The Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) use results of work injury studies to evaluate and develop safety standards, compliance strategy, and training programs.

Surveys in progress include warehouse workers, construction laborers, chemical and heat burn injuries, and injuries to workers involved in longshore operations.

Recordkeeping. The recordkeeping activities associated with the annual survey have largely been focused on the proposed BLS revision of the recordkeeping guidelines in Report 412-3, *What Every Employer Needs to Know About OSHA Recordkeeping*. The revision was prompted by the introduction of several changes in the regulations, and in response to OSHA's use of the recordkeeping system for administrative purposes, such as targeting safety inspections in manufacturing industries. In the revision, the regulatory changes were addressed, several issues on recordability were clarified, and the format was modified to make the information easier to access and comprehend. Also, an abbreviated set of guidelines was developed for employers with small-sized establishments and employers in low-hazard industries. The revised guidelines have been made available to the public for comment. Publication of the approved guidelines is expected in the spring of 1986.

Office of Field Operations

The regional office information staffs reduced their staffing levels by 19 positions. The sale of BLS publications was discontinued in 7 of the 8 regions as this activity was consolidated in a single location, Chicago. The practice of issuing periodic regional announcements of new BLS publications was discontinued, regional employment releases were reduced from monthly to quarterly, all announcements and regional office publication of wage survey results were also curtailed, and further progress was made in the handling of telephone inquiries by using more sophisticated and labor-saving telephone equipment.

A major step forward to measure and improve the quality of the Bureau's statistical reporting was taken this year with the establishment of the Consumer Price Index Process Audit Group. Quality analysts were hired and trained in 1985 and are conducting audits of data collected for the CPI Housing Survey. The process audit staff will identify systematic errors and develop a data base, the analysis of which will provide independent, statistically valid measures of the quality of the data collected that ultimately will measure the nonsampling error.

Planning for the data collection effort required for the Consumer Price Index Revision was completed. Major accomplishments included the development of on-the-job training standards and a certification procedure for each employee assigned to data collection. An orientation manual for field representatives and an annotated companion piece for field supervisors were developed in preparation for the estimated 200 new employees required for the collection effort for the revision program.

A dozen test projects were undertaken by the collection staff to provide empirical data and operational feedback on the utility and cost of new or revised procedures, forms, and collection methodology for pricing surveys on housing, commodities, and services and proposed quality assessment surveys. Segment refinement for the housing survey was completed on schedule in the 91 new areas, and staff began data collection in scheduled new areas.

The implementation of the fiscal 1985 Permanent Mass Layoff and Plant Closing (PMLPC) program was delayed until April 24 due to a proposed rescission. At the end of May, a PMLPC Cooperative Agreement was sent to the 42 States and the District of Columbia which were not funded by fiscal 1984 money. (Eight pilot States were funded for developmental work in fiscal 1984.)

By the end of August, the BLS regional offices had successfully negotiated developmental agreements with 32 States and the District of Columbia for a total of \$4.2 million. Negotiations continue to bring the remaining 10 States into the program.

During the same time, the regional offices negotiated 53 Labor Market Information Cooperative Agreements which included the Employment and Wages Report (ES-202) for the first time. (Responsibility for the ES-202 program is being transferred to BLS from the Employment and Training Administration beginning in fiscal 1986.) Due to the use of carryover funds and other sources, in many cases the State funding of the ES-202 program in fiscal 1986 will be at a reduced level from previous years.

Managerial Developments

Resources. The transfer of trust funds from the Employment and Training Administration to BLS was completed this year. In accordance with a Departmental decision, funding responsibilities for four national labor market statistical programs—Current Employment Statistics (CES), Local Area Unemployment Statistics (LAUS), Occupational Employment Statistics (OES), and Insured Employment and Wages are now fully centralized in BLS. The Bureau's budget now includes \$34.7 million in resources transferred in fiscal years 1984 and 1985 to the Bureau's base from trust funds from the Employment and Training Administration's State Unemployment Insurance and Employment Service Operations Account.

In accordance with the requirements of Section 2901 of the Deficit Reduction Act of 1984, the Bureau reduced its resource allocations for travel, printing, and consultants.

Security. Bureau policy has always prohibited unauthorized access to our use of BLS economic indicators prior to their official release as well as unauthorized access to or use of data from identified individual respondents. The advent of a Consumer Price Index futures market during the past year materially increased the potential economic value of advanced knowledge of unreleased Consumer Price Index figures and, thus, increased the risk of unauthorized access or use of this information. The Bureau acted in several areas throughout the year to counter these risks, including additional computer-related procedures, introduction of new work area security safeguards, employee confidentiality and security briefings, and the adoption of a policy barring all BLS employees from trading in CPI futures. The enactment of criminal penalty provisions for unauthorized trading in CPI futures has also been included in the Department of Labor's 1986 legislative program.

Publications. BLS publications received a total of eight awards for editorial excellence.

The Bureau set up new 24-hour telephone hotlines to provide recorded data on the Consumer Price Index and the Producer Price Index.

Occupational Safety and Health Administration

Fiscal year 1985 was a continuation of OSHA's policy of cooperation rather than confrontation.

The operation of OSHA's field offices as "full service" offices was one example of this policy. Full service offices supply a range of safety and health services to employers and employees in their areas. These services include providing speakers for local events; giving training in a wide variety of safety and health measures; advising and assisting employers in abating hazards; cooperating with local news media outlets to assure the public is informed about OSHA policies, programs, activities, and services; and providing other outreach activities.

The same spirit of cooperation and assistance marked enforcement functions as the agency continued its policy of settling contested actions rather than proceeding to court. Settlements required that hazards be corrected, reflecting OSHA's concern that safety and health in the workplace be improved as opposed to the collection of large penalties for noncompliance.

Also in enforcement pursuance, the agency began work on special emphasis programs to address safety and health concerns in special areas.

Following an explosion in June 1985 that killed 21 persons, the agency began a special emphasis program in the fireworks manufacturing industry. Under this program, every fireworks manufacturer with 10 or more employees will receive a comprehensive inspection before the 4th of July 1986.

In another area, the agency began work on a special emphasis program in the chemical industry. Under a pilot project, several of OSHA's field offices will undertake a limited number of comprehensive evaluations of chemical plant safety. These evaluations will go beyond a traditional inspection to learn whether there are violations of standards—they will include a comprehensive review of the entire safety and health program and all chemical systems in a particular plant. If the pilot program is successful, it will be extended in future years.

OSHA's policy of cooperation was also emphasized by considerable activity in the training and education area as well as in programs designed to enhance voluntary efforts to improve safety and health conditions.

OSHA's programs in partnership with the various States operating their own OSHA-approved safety and health programs were further evidence of the success of the cooperative approach.

Enforcement

In fiscal 1985, OSHA conducted a total of 72,400 inspections, the highest total in the past 9 years. Of these inspections, 72 percent were targeted on high-hazard industries and worksites.

Following the disastrous accidental release of the chemical methyl isocyanate (MIC) in Bhopal, India, OSHA conducted inspections of the sole producer of that chemical in the United States, Union Carbide of Institute, West Virginia, and the four major users of the chemical in Georgia, New York, Louisiana, and Texas. OSHA issued citations to two firms. Soon after the leak in Bhopal, India, OSHA officials testified before Congress to provide assurance that OSHA's program contains procedures/policies that can help prevent similar occurrences in the United States. At year's end, the agency was developing a pilot special emphasis program under which OSHA inspectors will conduct full-scale safety and health evaluations of a limited number of chemical plants, not simply inspections to determine if standards are violated.

As a result of OSHA's emphasis on protection of Federal workers, injury and illness claims dropped from 209,640 in 1980 to 169,180 in 1984, and the growth rate of compensation costs also declined from 1983 to 1984, saving the government an estimated \$51 million.

Standard-Setting

During the year, OSHA continued to develop standards to protect workers against hazards to their safety and health.

A proposed rule on Powered Platforms for Exterior Building Maintenance was published in the *Federal Register* on January 22, 1985. This rule would permit additional methods of powered platform engineering than the one OSHA currently requires.

Another rule was proposed for Presence Sensing Device Initiation for Mechanical Power Presses (PSDI). This "deregulation" would permit, but not require, the use of presence sensing devices to initiate strokes of mechanical power presses. It is expected that the use of state-of-the-art technology will enhance and achieve productivity gains and cost savings estimated to total over a half billion dollars over the first 10 years.

A Request for Information was published in the *Federal Register* on April 22, 1985, seeking information on whether current decompression tables relating to construction work in compressed air atmospheres need revision. Based on the information received, OSHA will decide whether changes to the standard are warranted.

A notice of proposed rulemaking was published on September 16, 1985 for Concrete and Masonry Construction Safety Standards. With this notice, OSHA proposed to revise the current construction safety standards addressing concrete and masonry construction to correct problems dealing with the hazards of reinforcing steel, concrete placement, equipment, formwork, precast concrete and masonry work.

Drafts also have been completed on two other proposed standards which have been forwarded to OMB for review prior to publication in the *Federal Register*: Warning Tags, and the Revision of Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks.

In addition, extensive work has been done on several proposed standards which at year's end were undergoing Departmental review: Scaffolds; Fall Protection; Stairways and Ladders; and Personal Protective Equipment (Fall Protection).

In the health area, a proposed standard on formaldehyde was prepared for submission to the U.S. Court of Appeals for the District of Columbia Circuit. The Court had ordered that the agency "take appropriate further action, looking toward the issuance of a (revised) standard" governing employee exposure to formaldehyde, by October 1, 1985. Furthermore, OSHA published its determination that a Federal field sanitation standard should not be issued since at least two-thirds of the hired field farm workers who could be covered by a Federal standard are already covered by State regulations. However, at year's end, that decision was under review by the Secretary of Labor.

OSHA also proposed to amend the labeling provisions of the ethylene oxide standard to avoid conflict with EPA labeling requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

And work proceeded toward the promulgation of new or revised occupational health standards for asbestos, benzene, ethylene dibromide, respiratory protection, 1,3 butadiene, and methylenedianiline.

State Programs

During fiscal 1985, OSHA continued to foster the strong Federal/State relationship established by the Occupational Safety and Health Act of 1970. Twenty-five States and territories administer their own OSHA-approved State plans. Twenty-three of these State plans cover both private and State and local government employment while two, Connecticut and New York, are limited in scope to employees of the State and its political subdivisions. To further the cooperative effort of the national occupational safety and health program, OSHA officials attended quarterly meetings held by State plan officials to assure the States' continued knowledge of and involvement in policy initiatives and other matters of mutual interest.

Key agency actions in the State program area during the year included:

- Granting final approval to eight additional States—Arizona, Iowa, Kentucky, Maryland, Minnesota, Tennessee, Utah, and Wyoming—bringing the total to 11. Final approval for the Alaska, Hawaii and Virgin Islands State plans was granted in fiscal 1984. Final approval is the last step in the State plan approval process and reflects OSHA's judgment that, in actual operation, the State plan is "at least as effective" as the Federal program. Although authority for concurrent Federal jurisdiction is relinquished with final State plan approval, monitoring of State activities continues.
- Certifying the New Mexico State plan, in December 1984, bringing the number of certified State plans to 23. Certification is a necessary prerequisite, attesting to structural completeness of the State plan, before OSHA can grant final approval to a State program based upon the effectiveness of its actual performance.
- Completing the process to revise "fully effective" staffing benchmarks for several States, in accord with the terms of the court order in *AFL-CIO v. Marshall* (C.A. No. 74-406). The benchmarks revision process relies on State-specific data.
- Accepting one additional State, bringing the total to 22, as a partner in OSHA's Integrated Management Information System, thus assuring the availability of much more comprehensive data on State and Federal performance.
- Issuing revised State plan activities measures which set out the criteria upon which State performance is measured. The revisions are designed to make the measures more comprehensible, and to facilitate comparison of Federal and State data.

- Convening a Federal/State task force to revise the State plan monitoring procedures, which are based upon review of State-specific performance data in comparison to Federal performance data or other relevant criteria. The monitoring system was implemented in fiscal 1984 with the understanding that it would be revised as a result of program experience and in response to Agency policy changes.
- Implementing a fiscal 1984 directive that revised and clarified the process whereby OSHA reviews and approves State occupational safety and health standards and, in particular, the process for addressing State standards which differ substantively from the comparable OSHA standard.

Voluntary Efforts

In keeping with the agency's emphasis on improved communication, OSHA continued to provide services through its consultation program. The program assists employers in identifying and correcting hazards and in developing effective management systems for preventing workplace hazards. These services, provided at no cost to the employer, are mainly for smaller employers in more hazardous businesses. Consultation may cover all or part of the workplace in response to the employer's request. The service is administered by State government agencies or universities utilizing staff separate from enforcement. The service is also confidential to the employer, and a request for consultation does not trigger a State or Federal inspection. While the service is penalty free, the employer is required to take immediate action to eliminate employee exposure to an imminent danger situation and to correct any identified serious hazard within a reasonable time.

During fiscal 1985, OSHA worked toward full program implementation of regulatory changes made the previous year. Consultants now evaluate what preventive management practices should be in place to cover any hazards they identify. Consultants encourage employers to request a comprehensive review of their safety and health program as well as a hazard survey. Employers who are interested and can qualify for a 1-year exemption from OSHA general schedule inspections are encouraged and assisted in pursuing the program. In addition, consultants provide training to employers and employees and limited off-site assistance. The central purpose of these new consultant activities is the prevention of workplace injuries and illnesses by assisting employers to establish effective workplace safety and health programs.

Since these program changes amount to a major expansion of the role of consultants, continuing policy direction and training are necessary to ensure that the expanded services are available to all employers.

During fiscal 1985 a training package was developed to help consultants identify training needs and the best approaches to providing informal training. In addition, policy directives were finalized on safety and health program assistance, the inspection exemption program, and training by consultants. Refresher training on all aspects of the expanded consultant role is planned for next year.

Furthermore, during fiscal 1985, OSHA provided 1-year exemptions totalling 277 from scheduled inspections. These were granted to smaller employers who had received a comprehensive consultation hazard survey, had corrected all hazards identified, and had demonstrated that an effective safety and health program was in operation. Consultants are also participating in an OSHA national emphasis program in the fireworks manufacturing industry by promoting their services to these employers, with emphasis on assistance in developing effective hazard prevention systems.

In another important area, OSHA is increasing its promotion of Voluntary Protection Programs to companies that are fully committed to employee safety and health and are incorporating these objectives in the daily operation of their workplaces. General Industry participants in the program have reduced their lost work-day cases on average to approximately one-fifth of the rates expected for their industries. In addition, participants in the programs report improved morale and productivity as well. There were 15 additional worksites approved during the year.

These initiatives are "encouraging employers and employees in their efforts to reduce...hazards...and to stimulate...programs for providing safe and healthful working conditions..." as directed by section (2)(b)(1) of the OSHAct. They afford OSHA an opportunity to exert a positive leadership role in addition to its primary duty of enforcing compulsory standards.

Training and Education

The fiscal year 1985 enrollment at the OSHA Training Institute for compliance officers, State personnel, Federal safety and health representatives from other agencies, and the private sector was approximately 7,100. The safety and health training offered at the Institute is an important part of OSHA's efforts to use all of its resources to help employers and employees eliminate occupational

safety and health hazards. The Institute offered 57 courses, of which 15 were conducted at sites away from the Institute so that actual worksite situations could be experienced. Six different courses were offered for private sector personnel, including one on safety and health for the maritime industry, two for construction, and three courses for general industry. More sessions of these courses were held than in previous years, thereby increasing private sector participation in safety and health training provided by OSHA. During fiscal 1985, OSHA initiated a policy of charging tuition to private sector students attending Training Institute courses.

The OSHA Office of Training and Education developed generic training materials on new and revised standards for use by the field. Train-the-trainer sessions, where trainers were shown how to use the basic program and how to incorporate information on specific standards, were conducted for representatives from each OSHA field office. In addition, hazard recognition slide/tape programs designed for the small employer were developed. These slide/tapes covered topics such as confined space entry, welding and cutting, carbon monoxide, and eye injuries. Seven slide/tape programs were made available to OSHA offices during fiscal 1985. Three remaining programs will be available during the first quarter of fiscal 1986. The programs are also available for purchase through the National Audiovisual Center.

During fiscal 1985, OSHA presented its first Project Minerva Seminar. Project Minerva is a program sponsored by OSHA and the National Institute for Occupational Safety and Health (NIOSH) and designed to make managers and future managers aware of the need to integrate safety and health into a firm's management system. The 1-day seminar was directed towards nonsafety and health managers in middle-sized companies; it stressed the importance of senior management commitment to safety and health.

Also, OSHA, NIOSH, and the Medical College of Wisconsin, presented a 2-day seminar entitled "Orientation to Occupational Health Hazard Recognition for Physicians." This seminar was designed to assist physicians in evaluating workplace hazards and diagnosing occupational illnesses. More than 30 occupational health physicians attended.

Also, representatives of the Asbestos Workers' locals from around the country attended OSHA's second "Guide to Voluntary Compliance in the Health Area" to learn about safety and health hazards and compliance in asbestos abatement programs.

Under its New Directions grants program, OSHA awarded \$5.6 million to approximately 100 nonprofit groups providing a

variety of job safety and health services. The grants support training and education projects addressing serious problems in construction, manufacturing, and other high hazard occupational and industrial sectors.

The New Directions grants program is designed to provide an organization with the funds it needs to develop its staff, skills, and services as a competent, self-sufficient center for job safety and health. Grantees usually participate in the program for up to 5 years, with some grantees also being funded for a 1-year planning phase in which the 5-year program is planned and organized.

Completing their program this year were 23 New Directions grantees, most of whom have become competent, self-sufficient centers for job safety and health. This group consists of 14 labor organizations, five employer associations, three educational institutions, and one other nonprofit organization.

During the fiscal year, the General Accounting Office and the Department of Labor Inspector General issued reports presenting the results of audits of the New Directions Program. Both reports were favorable and contained no recommendations for program change.

Employment Standards Administration

On February 19, 1985, the Supreme Court ruled, in *Garcia vs. San Antonio Metropolitan Transit Authority et. al.*, that the Fair Labor Standards Act could constitutionally be applied to all State and local government employees.

In response to that decision, Secretary Brock offered to provide technical assistance to the States to help them comply with the ruling. At the end of the fiscal year, the Employment Standard Administration's (ESA) Wage and Hour Division was prepared to make experienced personnel available to States requesting technical assistance. At the same time, Secretary Brock was working with members of the Congress and representatives of State and local government and unions to bring about a solution to the problem of the State and local governments which would have to pay cash time and one-half rates for overtime work instead of the customary compensatory time off.

During fiscal 1985, ESA's Office of Workers' Compensation Programs continued to emphasize cost reduction, program integrity and the elimination of fraud, waste and mismanagement in its Federal employees' compensation, longshore and harbor workers' compensation, and black lung benefits programs. Field office management in all three programs was streamlined during the fiscal year, and longstanding backlogs were eliminated in the Federal Employees' Compensation Act (FECA) program. Improved automated data processing systems were developed and tested in the longshore program, and decentralization to improve efficiency continued in the black lung program.

In ESA's Office of Federal Contract Compliance Programs (OFCCP), the largest number of compliance reviews was completed since the program was consolidated in the Department of Labor in fiscal 1978.

Office of Workers' Compensation

The Office of Workers' Compensation Programs (OWCP) streamlined management of field office operations in each of its programs during fiscal 1985. In the Division of Federal Employees' Compensation (DFEC), longstanding backlogs were eliminated, field office management roles were redefined, and intensive

management training was developed for line supervisors. In the Longshore program, development and testing of improved automated data processing systems took place during the year. Also, the Division of Coal Mine Workers' Compensation (DCMWC) continued to decentralize its claims operations to district offices to improve the quality and timeliness of its case processing.

The Office also continued to emphasize cost-savings, program integrity, and the elimination of fraud, waste and mismanagement. DFEC continued major efforts to reemploy disabled Federal employees. Through coordination between OWCP rehabilitation specialists and DFEC claims examiners, rehabilitation saved \$8 million in Federal employees' compensation costs. In the Longshore program, rehabilitation saved \$3 million in compensation costs.

In January 1985, the Longshore program published interim regulations implementing the amendments to the Longshore Act, signed by President Reagan on September 28, 1984. The new law makes important changes in benefit schedules, it permits debarment of medical providers to ensure the integrity of the program, and increases penalties for fraudulent actions.

DFEC collected \$12.2 million in third-party payments and overpayments to beneficiaries. DCMWC recovered over \$15.9 million from responsible mine operators and insurance carriers, and from overpaid beneficiaries and medical providers.

Federal Employees' Compensation

Believing that excellent field office management is a key to a good claims operation, DFEC modernized its field management system through a comprehensive training program and a redefinition of roles and functions of managers. The training course, aimed at claims unit supervisors who have the greatest influence over timeliness of service and quality of claims work, was developed over a 9-month period by a special task force. It gives supervisors effective techniques for developing subordinate employees, delegating work, monitoring performance and meeting program standards better. At the same time, DFEC made a sweeping modification of decision-making authority levels in field offices, permitting the delegation of decisions to the supervisory and journeyman claims examiner level. Assistant Deputy Commissioners were redesignated "District Directors" to emphasize their mandate to manage subordinate units, maintain effective quality control and pursue program goals.

In a major project to bring its workload current, the Federal Employees' Compensation program resolved 87 percent of cases

in the system which were a year or more old, adjudicating over 4,000 of those old cases in the 7 months from January to July. A new standard for district office performance in 1986 requires that virtually every case be adjudicated in 1 year or less, leaving no backlogs of unresolved claims in the system.

Guaranteed prompt payment of compensation to injured Federal employees, with no interruption of income, became a major goal for the program in 1985, when studies showed that employees waited an average of 3 months to receive their first check after the termination of salary. Using new automated tracking support, district offices were required to follow each claim form through initial review and processing to payment, and to reduce internal time frames to the minimum. Federal agencies were notified through the Federal Personnel Manual and in interagency meetings to actively encourage employees to file in anticipation of continuing wage loss. Evidence requirements for initial compensation payment were redefined to minimize the interruption of income in undisputed claims.

The Department of Agriculture (USDA) entered into a formal agreement to undertake a joint project with the DFEC to bring disabled claimants on the long-term rolls back to gainful employment at lighter duty in the agency. The Office of Management and Budget granted 500 additional positions for fiscal 1985 and 1986 for this project. The project is centered largely in the West, and is bringing back large numbers of Forest Service employees who would otherwise have no wage-earning capacity and have been receiving total disability compensation.

The Department of the Army announced the successful completion of the Tobyhanna Depot reemployment project with a lifetime compensation savings of \$3.2 million based on reemployment of some workers and election of retirement by some who refused new employment. The project will be expanded to all Army facilities in 1986.

Longshore and Harbor Workers' Compensation

In fiscal 1985 a major effort for the Longshore Division has been the implementation of the Longshore and Harbor Workers' Compensation Act Amendments of 1984. These amendments, effective on September 28, 1984, were the first amendments since 1972 and provided for extensive changes in the statute. Some of the major provisions of the amendments clarify and limit the Act's jurisdiction, make changes in benefits, establish a method of providing

benefits for victims of latent disabilities due to occupational disease, and provide additional safeguards against abuse such as increased penalties for fraud.

During the first 3 months of fiscal 1985, the Division developed regulations implementing the amendments. The regulations were published, on schedule, as interim final rules on January 3, 1985. Internal operating procedures and instructions to the affected industries were also developed and issued in fiscal 1985. Comments on the regulations which were submitted by interested parties were evaluated in fiscal 1985, and final regulations are scheduled for publication in fiscal 1986.

The final stages of development of an automated Case Management System for the Longshore Program were completed during fiscal 1985. The system is comprised of three major subsystems: (1) *The Longshore Case Control Subsystem*, which will provide case tracking and transaction record keeping on all lost-time and death claims received by the Longshore District Offices. It will also furnish the claims processing staff with a means of reviewing each claim as it proceeds through the administrative review and adjudicative process; (2) *The Longshore Management Information Subsystem*, which will provide workload and management statistical information pertinent to the overall operation of the Longshore program, individual district office effort, and claims examiner effort; and (3) *The Longshore Correspondence/Word Processing Subsystem* which will generate automatic correspondence to be sent to various parties involved in a specific case. The system was pilot tested in one of the program's district offices at the end of fiscal 1985, and is scheduled to be operational in all district offices by about mid-fiscal 1986. The system will assist in more timely case reviews and responses to inquiries as well as more efficient work flow in the district offices.

During fiscal 1985 approximately 41,000 lost-time injury reports were received and processed and 6,700 informal conferences were held. Approximately 900 new rehabilitation cases were opened and 290 workers were rehabilitated.

Efforts of the technical assistance outreach program have, in fiscal 1985, resulted in compensation payments being paid promptly to claimants by carriers and self-insured employers and an increase in the timely filing of required reports by carriers, self-insurers and medical providers.

Black Lung

The Division of Coal Mine Workers' Compensation continued the decentralization of the program during fiscal 1985. Review of

diagnostic billings and the adjudication of Certificates of Medical Necessity (CMN's) were transferred from the national office to district offices closer to claimants. Adjudication of CMN's is used to approve durable medical equipment, including home oxygen, home nursing services, and pulmonary rehabilitation treatment. The review and processing of medical determination billing prior to authorizing payment serves to improve the quality of the tests, to increase timeliness, and control related costs.

During fiscal 1985, the Division received 6,619 new claims and 3,243 refiled claims. Decisions were made on 11,614 claims. At the end of the fiscal year there were 5,195 claims pending an initial decision. The division also held 1,060 informal conferences and forwarded 8,045 claims to the Office of Administrative Law Judges for formal hearing. The Office of Administrative Law Judges issued 7,063 dispositions to the Division. Additional workload included maintenance of approximately 74,000 Medical Benefits Only claims, 90,000 Trust Fund monthly benefits claim, 7,876 claims in interim pay pending final resolution and 3,770 claims in which responsible mine operators were paying monthly benefits.

As a result of debt collection activities, the Black Lung division recovered over \$8 million from responsible mine operators, insurance carriers, beneficiaries, and medical providers. Approximately \$591 million was paid in benefits to coal miners, eligible survivors, and medical providers. Of this amount, approximately \$492 million was paid to miners and their survivors as monthly benefit payments.

Vocational Rehabilitation

The OWCP Division of Vocational Rehabilitation continued to increase the quality and timeliness of vocational rehabilitation services during fiscal 1985, thereby assisting many injured workers to become self-supporting and reducing compensation costs.

This year national reemployment programs were implemented with the Departments of Agriculture, Army and Labor to facilitate the return to employment of injured workers under the Federal Employees' Compensation Act.

The Division recruited, selected, and provided training in OWCP policy and procedures to approximately 550 contract rehabilitation counselors. They provided rehabilitation counseling, guidance, placement and followup services to injured workers.

During the year, 647 injured Federal workers were rehabilitated under the Federal Employees' Compensation Act, sav-

ing more than \$11,800 per worker in compensation costs. Total savings for the year were \$8 million in compensation costs.

Also in fiscal 1985, 295 injured workers in the private sector were rehabilitated under the Longshore and Harbor Workers' Compensation Act, for savings of more than \$10,300 per worker in compensation costs. Total compensation costs saved for the year were \$3 million.

Fraud, Waste and Mismanagement

During fiscal 1985, OWCP continued its efforts to reduce fraud, waste and mismanagement. In DFEC, standards for the development and adjudication of claims and effective case management were enforced to assure that claims are processed in a timely manner and in accordance with the laws and regulations. The investigation of questionable claims by Wage-Hour and OFCCP compliance officers was successful in reducing the number of claimants on the rolls who are no longer eligible for benefits.

Through Memoranda of Agreement with the Office of Personnel Management (OPM), OWCP and OPM matched beneficiary rolls to identify additional recipients of prohibited dual benefits, and achieved better mutual procedures for offsetting benefits to collect debts. Also in DFEC, the first and second lists of excluded medical providers were transmitted to the field offices and disseminated among employing agency offices. A process was developed of reconciling accounts for the annual charging of benefits costs to the employing agencies, and training in reconciliation was provided to fiscal officers.

DCMWC participated with Social Security Administration and other State and Federal agencies in computer matching to ensure the integrity of monthly benefit payments to black lung beneficiaries. The Division continued to work closely with the OIG in several regions on active investigations of medical providers and others suspected of fraud by the Division. DCMWC continued to implement procedures for improving security to minimize fraud within the claims process, as well as to conduct periodic audits to ensure the integrity of the benefit payment system.

Automated Data Processing

Work continued throughout fiscal 1985 on the Federal Employees' Compensation Level II automated data processing system. A contract for this major new system was awarded in fiscal 1984, and an ESA project team was assembled to supervise and review contract deliverables. Initially, the system will integrate DFEC's pay-

ment and case monitoring system; automate various fiscal functions; reduce manual processing of medical payments; and provide automated support for a wide range of claims adjudication, medical services, and rehabilitation activities. The system will require new organizational patterns, which are being developed through a series of work groups with field office participation.

The Longshore program made progress toward automating its district office operations. A case management system will provide automated case control, management information, and word processing capability. The system was pilot tested in a district office in fiscal 1985, and is expected to be operational in fiscal 1986. Finally, on May 17, 1985, a contract was awarded by the Black Lung program for a new support services package to provide for enhanced data processing, medical bill payments, and other services. The new system will begin operation in fiscal 1986.

Wage and Hour Division

The Garcia Ruling. On February 19, 1985, the U.S. Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority et. al.* that the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA) apply to the mass transit employees of the San Antonio Metropolitan Transit Authority. In deciding this case, the Supreme Court expressly overruled its earlier decision in *National League of Cities v. Usery* that the minimum wage and overtime pay provisions of the FLSA could not constitutionally be applied to State and local government employees who are engaged in traditional governmental functions. Consequently, the monetary provisions of the FLSA now apply to all State and local government employees, except those employees who are excluded from the definition of "employee" contained in section 3 of the Act, or who are otherwise exempt.

In light of the *Garcia* ruling, the Secretary of Labor offered to provide technical assistance to the States in complying with the FLSA. Under this program, the Wage and Hour Division at the end of the fiscal year was prepared to make available experienced personnel to States requesting technical assistance. Meanwhile, with Wage and Hour enforcement first scheduled to start on October 15, 1985 and then rescheduled by Secretarial order to November 1, the Congress was at work at fiscal year's end on legislative adaption of the Act to apply more smoothly to State and local government requirements.

Minimum Wage and Overtime Standards

Timely response to complaints was the cornerstone of the Wage and Hour Division's enforcement strategy during fiscal year 1985. The division conducted 66,943 compliance actions under the FLSA, of which 49,651 were initiated as a result of complaints from workers or concerned citizens. The inventory of complaints increased from 21,675 to 25,570.

The FLSA enforcement program disclosed \$29.6 million due 166,683 workers as a result of minimum wage violations, and \$79.7 million due 268,124 employees as a result of overtime violations. Employers agreed to pay \$18.6 million in unpaid minimum wages to 139,251 workers and \$61.5 million to 239,144 employees due overtime pay for a total of \$80.1 million in FLSA back wages in fiscal 1985.

The difference between the amount of back wages found due employees and the amount that employers agreed to pay reflects, for the most part, sums involved in pending litigation and the refusal of certain employers to pay back wages in cases the Department deemed unsuitable for litigation. The FLSA permits individuals to bring private suits to collect back wages, liquidated damages, attorney's fees, and court costs. The Department's enforcement statistics do not include the back wage amounts recovered in private suits.

The Special Targeted Enforcement Program (STEP) is aimed at discouraging employers from employing illegal aliens at less than legal wages. Because illegal aliens do not file complaints, the Wage and Hour division targets FLSA investigations in industries and localities where aliens have traditionally been found to be employed. The purpose is to reduce the incentive for hiring those workers who tend to accept employment at less than the minimum wage and/or without proper overtime compensation. In fiscal 1985, STEP investigations were conducted.

Child Labor Standards

The Wage and Hour Division found 9,836 minors employed in violation of the child labor provisions of the FLSA during fiscal 1985. The division assessed \$1,021,603 in child labor civil money penalties against 758 employers who were found to be illegally employing 6,330 minors.

A total of 171 exceptions were filed with the Wage and Hour Division by employers contending that penalties should not have been assessed and requesting a hearing before an administrative law judge.

The Work Experience and Career Exploration Program (WECEP) for 14- and 15-year-old youths likely to drop out of school was revitalized during fiscal 1984. This program is operated in conjunction with the U.S. Department of Education and State education departments. Twenty States and the District of Columbia presently participate in WECEP. Improvement of existing programs and expansion of programs to other States is anticipated.

Special Minimum Wages

Section 14 of the FLSA authorizes the Secretary of Labor, "to the extent necessary to prevent curtailment of opportunities for employment," to provide for the employment of certain categories of workers at wage rates below the statutory minimum wage. These categories include full-time students employed in retail or service establishments, agriculture, or institutions of higher education; learners; apprentices; handicapped workers and messengers. Such employment must be authorized under special certificates issued pursuant to the Secretary's regulations.

The division issued 38,200 certificates during fiscal 1985 authorizing the employment of approximately 399,864 workers at less than the minimum wage. Full-time students and handicapped workers employed by sheltered workshops accounted for, respectively, 49 and 48 percent of the workers employed under certificates.

The Secretary's Advisory Committee on Sheltered Workshops met in August 1985 to consider matters concerning the authorization of special minimum wages for handicapped workers employed by sheltered workshops. The committee provides advice and recommendations to the Secretary on the administration and enforcement of the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, and the Service Contract Act as these laws apply to the employment of handicapped workers by sheltered workshops, hospitals, and institutions.

Section 11(d) of the FLSA authorizes the Secretary of Labor to issue rules which regulate, restrict, or prohibit industrial homework in order to safeguard the Act's minimum wage requirements.

Since the 1940's, homework has been restricted in only seven industries. The regulations restrict homework to individuals who are handicapped and cannot adjust to factory work or are required to remain at home to care for an invalid.

In October 1981, following an extended period of public hearings and comment, the Secretary removed the restrictions in one of these industries, knitted outerwear. The Department's action

removing the restrictions was challenged in court by the International Ladies' Garment Workers' Union and others. As a result of a court order, the restrictions were reimposed on May 24, 1984.

After public notice and comment on a further proposal, a final rule was issued, effective on December 5, 1984, which modified the restrictions to allow employers in the knitted outerwear industry to employ homeworkers, provided the employers obtain certificates from the Department of Labor authorizing such employment.

In fiscal year 1985, 52 certificates were issued to employers in the knitted outerwear industry.

Migrant and Seasonal Agricultural Worker Protection Act

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which replaced the Farm Labor Contractor Registration Act (FLCRA) in 1983, provides important worker protections to migrant and seasonal agricultural workers, including vehicle safety, housing safety and health requirements, disclosure of wages, hours and working conditions, maintenance of necessary records and provision to workers of itemized information concerning pay and withholding. MSPA covers employees of farm labor contractors, as well as those employed by fixed situs employers such as farmers. MSPA requires farm labor contractors to register with the Department of Labor and to comply with all the provisions of the Act, unless statutorily exempt. During fiscal 1985, there were 12,356 registrants (including 9,384 farm labor contractors and 2,972 farm labor contractor employees) who employed approximately 375,535 crew members.

The Wage and Hour Division conducted 4,269 MSPA compliance actions during fiscal 1985 which resulted in civil money penalties totaling \$1,423,565 assessed against violators. In addition, there have been 130 revocations, refusals to issue and refusals to renew farm labor contractor certificates of registration.

MSPA also prohibits a farm labor contractor from knowingly employing illegal aliens. In enforcing this provision, the Wage and Hour Division works closely with the Immigration and Naturalization Service. In fiscal 1985, 153 farm labor contractors were cited for employing a total of 2,077 illegal alien workers.

A number of investigations which evidenced possible criminal violations of other statutes were referred to the Justice Department in fiscal 1985.

The National Farm Labor Coordinated Enforcement Committee and regional coordination committees, comprised of representatives of the regional and national offices of the Employment Stand-

ards Administration, the Employment and Training Administration, and Occupational Safety and Health Administration, continued to coordinate programs and services that have impact on migrant and seasonal agricultural workers.

Prevailing Wage Laws

Government contract enforcement concentrated on complaints alleging violations of the various laws that provide labor standards for employees performing government contract work. During fiscal 1985, 4,423 investigations were conducted under the Davis-Bacon and Related Act, the Service Contract Act, the Walsh-Healey Public Contracts Act. Back wages found due to 48,589 workers under the provisions of these laws totaled \$29.9 million. Employers agreed to pay \$21.9 million of these back wage amounts to 43,122 workers. Additional monies were to be restored upon completion of administrative hearings or litigation action.

Pursuant to the Davis-Bacon and Related Acts, 13,497 prevailing wage determinations were issued during the fiscal year. Of this total, 763 were general determinations, published in the *Federal Register*, which apply to many construction contracts in a given geographic area, and 12,734 were issued for specific construction projects.

Various alternatives for improving the collection of wage data used in making Davis-Bacon wage determinations continued to be explored.

The U.S. Court of Appeals for the District of Columbia Circuit, on July 5, 1983, largely reversed a District Court ruling which had enjoined certain major provisions of the Department's May 1982 revised Davis-Bacon regulations. The U.S. Supreme Court denied review of the Appeals Court decision and on December 21, 1984, the District Court issued an order lifting the injunction on several key provisions which had been upheld. On January 31, 1985, the Department implemented those provisions. The District Court injunction remains in effect for certain provisions pertaining to the expanded use of "helpers" on Davis-Bacon projects. The Department intends to implement the helper provisions in accordance with the court decisions. When fully implemented, the revised regulations are expected to result in an annual savings of several hundred million dollars to Federal agencies and contractors.

On January 27, 1984, the U.S. District Court for the District of Columbia upheld the Department's revised Service Contract Act regulations published October 27, 1983, in a suit filed by the AFL-CIO and individual unions. The AFL-CIO appealed this ruling and

on March 22, 1985, the Appeals Court upheld seven of the eight challenged provisions. The Appeals Court invalidated one new provision interpreting the geographic scope of the Act's coverage. The revised regulations are expected to reduce costs on Federal service contracts by over \$100 million annually.

Youth Employment Opportunity Wage

On March 25, 1985, President Reagan sent a message to Congress requesting the enactment of the "Youth Employment Opportunity Wage Act of 1985." The proposed legislation was introduced in the House of Representatives as H.R. 1811 and in the Senate as S. 797. The legislation is designed to increase the employment opportunities for young people by establishing a special minimum wage for them during the summer months. The bills provide that employers can pay youths under 20 years of age 75 percent of the Federal minimum wage, or \$2.50 per hour, whichever is less, during the period from May 1 through September 30. The bills prohibit the reduction of wages of any youth employed 90 days prior to May 1. The bills also prohibit any employer from discharging, transferring, or demoting any other employee in order to hire a worker at the youth wage.

Federal Employees' Compensation

The Federal Employees' Compensation program in fiscal 1984 was directed toward the early return of claimants to suitable employment as the key to its long-term case management. By fully implementing its case management process, relying on early specialist referral and job search for partially disabled claimants, FEC encouraged agencies to identify and promote job opportunities for recipients. As a result, several government agencies responded to OWCP outreach programs by entering into agreements to rehabilitate and reemploy their former employees.

The division also negotiated an agreement with the Office of Personnel Management to share in the Federal Personnel Manual issuance series, and to support an advanced training course for agency compensation specialists, in order to speed and improve the presentation of employee claims.

Under a major interagency agreement with the Army Materiel Command, to run until March 1985, the division has been training 9,400 first-line supervisors in compensation claims processing. The division also assisted the Departments of the Treasury and Agriculture, the Social Security Administration, and other

agencies to design national compensation programs which will improve service to employees. Within the Employment Standards Administration, a Model Compensation Program has been developed to standardize claims processing, including training of regional compensation coordinators and first-line supervisors.

OWCP increased the use of accountability review teams and programwide quality control measures. District offices are required to demonstrate that they are staffing and performing a wide range of quality control functions, and program performance analyses are provided regularly to district office managers. Two regions are testing the concept of a decentralized hearing function, with hearing examiners based in the regional city and covering several States, to determine whether timeliness is served by decentralization.

Office of Federal Contract Compliance Programs

During fiscal 1985, OFCCP completed 5,217 compliance reviews, the largest number completed in any fiscal year since the program was consolidated in fiscal 1979. The contractors reviewed employed a total of 2,978,205 employees. In completing a record number of reviews, OFCCP reduced the number of aging compliance reviews over 1 year old to 83 in fiscal 1985. Complaint cases in inventory at the end of the fiscal year have declined from 3,208 in fiscal 1980 to a current inventory level of 644 in fiscal 1985 (not including cases awaiting administrative or legal decision). OFCCP conducted 1,003 investigations of discrimination complaints.

Where contractor noncompliance was found, OFCCP entered into 1,158 conciliation agreements and 2,106 letters of commitment. It recommended enforcement actions, which could result in removal of contractors from eligibility to compete for Federal contracts, against 25 firms.

Of the agreements obtained in fiscal 1985, 396 were cash benefit or other financial agreements in which contractors committed a total of \$7,585,157 in financial outlays for lump sum, cash payments, back pay, salary adjustments, accommodation, recruitment and training costs, etc. Of this total in financial agreements, \$1,884,238 in back pay awards went to 299 women, minorities, handicapped persons and veterans.

Over 10,480 contractors were provided voluntary technical assistance to better enable them to comply with OFCCP regulations. In addition, by the end of fiscal 1985, approximately 250

liaison groups had been formed. These groups explore general compliance problems and solutions in a cooperative setting. They contribute valuable input to OFCCP on ways to improve the compliance process, and address aspects of affirmative action unique to their employment situations or industries. OFCCP, in turn, provides advice, specific technical assistance and an exchange of information.

In 1,679 instances, OFCCP arranged "linkage" agreements between employers and agencies providing worker training or referral services.

During fiscal 1985, a number of initiatives were in effect or were begun to increase program outputs and improve quality and program effectiveness. These initiatives include:

- A uniform system for selecting contractor establishments for compliance reviews. The system provides computer screening of contractors to observe historical trends in Equal Employment Opportunity (EEO) profiles. This screening identifies contractors, by industry and by geographic areas, whose workforce participation rates for women and/or minorities fall below the average for similarly situated contractors.
- Case management procedures, including the monitoring of cases in progress, to assure timely completion of compliance reviews and complaint investigations. Such case management procedures have reduced the number of hours required to conduct compliance reviews and complaint investigations.
- Increased focus on case quality assurance; regional quality audits; enhanced National Office accountability review procedures to ensure investigative content and consistent application of regulations and procedures.
- Continued encouragement of contractors' voluntary efforts toward affirmative action by increased high quality technical assistance, by recognition of contractors whose compliance efforts are meritorious, and by the forming of liaison groups with OFCCP.
- Completion of the OFCCP Microcomputer Prototype Project in March, 1985. Its results indicated that a microcomputer system would be cost-effective in giving OFCCP personnel data processing capability for making the tabulations and statistical analyses necessary for compliance actions and for creating the records, reports and documentation for these actions.

- In September, 1985, an in-depth study was completed that examined the relationship between the quality of compliance actions and the time expended to conduct them.
- The continued development and implementation of additional guidance on proving and remedying systemic discrimination.
- Completion of the revision to the Contract Compliance Manual to coincide with agency policy and to provide better guidance to compliance officers.
- Enhancement of management information systems to improve the quality, integrity, and timeliness of data used in evaluating contractor performance, as well as our own performance.
- Realignment of area office structure to improve the responsiveness of the agency to program needs, to maximize the allocation of resources and to improve management of program operations.
- Development of a revised training program to address the needs of professional field staff for programmatic training. The training will result in increased quality and efficiency in the compliance review process and the investigation of complaints.

Office of State Liaison and Legislative Analysis

Through its Divisions of Legislative Analysis, State Employment Standards Programs, and State Workers' Compensation Programs, the Office of State Liaison and Legislative Analysis provides assistance to the States and coordinates Federal-State activities in the areas of workers' compensation, labor standards, and equal employment opportunity.

The Division of Legislative Analysis played an active role in the preparation of testimony and background materials for hearings held by the Senate on the Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority et al.* The *Garcia* decision extended coverage of the Fair Labor Standards Act to employees of State and local governments. The Division also developed testimony and background materials for Congressional oversight hearings held on the funding of black lung benefits and the processing of black lung claims, and on affirmative action requirements for Federal contractors. The Division continued its participation in the development of the youth employment opportunity wage proposal that was again proposed by the Administration. Additionally, the Division monitored and prepared reports on Congressional actions on immigration reform and on other program

areas of interest to ESA. The Division also developed issues papers for legislative decisions and regulatory materials required under Executive Order 12291.

The Division of State Employment Standards Programs furnished expertise to ESA on State labor standards laws and programs, and on issues that impact on or are affected by ESA programs. The Division developed considerable information on State employment standards, particularly on subjects of major interest to ESA, such as the interaction between State law and the proposed youth opportunity wage, developments in the prevailing wage field, and existing State standards in relation to the *Garcia* decision.

In the promotion of improved Federal/State coordination of similar programs, the division served as catalyst and facilitator in the consideration of proposed ESA/State agreements for cooperative activities.

The Division provided technical advisory assistance and information on numerous labor standards subjects in response to some 500 requests from State labor departments, management organizations, multi-State employers, organized labor, other Federal agencies, the Congress, and others. Throughout the year, the Division maintained active working relationships with State governmental labor officials and their organizations, and participated in several regional and national conferences of State officials. In serving as a national clearinghouse of information on State legislative developments, the division reviewed and analyzed about 1,000 State labor bills and new laws and published summaries of approximately 375 of these bills.

The Division of State Workers' Compensation Programs serves as a national clearinghouse of information on State workers' compensation laws. It analyzed 260 enacted workers' compensation amendments from 1,400 proposed amendments during fiscal 1985 and prepared 10 reports and analyses of State workers' compensation laws.

The Division provided on-site technical assistance to 13 State workers' compensation agencies in the implementation or improvement of their information systems. It also provided on-site technical assistance to nine State workers' compensation agencies and five State legislative committees in the improvement of their rehabilitation programs. In conjunction with the International Association of Industrial Accident Boards and Commission (IAIABC), the division updated its in-depth profile on the administration of each State workers' compensation agency for inclusion in the publication, *State Workers Compensation Administration Profiles*.

The Division worked closely with eight States in arranging and conducting workers' compensation conferences for educational purposes and/or to focus on issues for possible legislative changes.

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Mine Safety and Health Administration

In fiscal 1985, the Mine Safety and Health Administration made special efforts to expand its cooperative programs with industry and labor to further improve protection of the Nation's miners.

There were 170 deaths in U.S. coal and metal and nonmetal (noncoal) mines during the fiscal year, compared with 165 fatalities in fiscal 1984. Of the total deaths during the 1985 fiscal year, 27 fatalities occurred in a single accident in December 1984, the Wilberg Mine fire in Utah. During and after that fire, many MSHA safety specialists, technicians, and others worked countless hours overseeing rescue and recovery operations at the Utah mine site, conducting engineering and technical activities related to mine ventilation and roof control, testing for toxic gases, conducting a thorough accident investigation, and other activities.

Although the totals for the past 2 years were above the record-breaking low figure of 131 mine deaths during fiscal 1983, they were considerably lower than the average fiscal year toll of 229 deaths during the 1980-1982 period.

The incidence rates per employee production hours for all types of injuries in accidents declined in both coal and noncoal mining during fiscal 1985, compared with the rates for fiscal 1984. The fatal injury rate in metal and nonmetal mining during fiscal 1985 was about the same as the rate for 1984, while the fatal rate for fiscal 1985 in coal mining showed a rise from the rate in fiscal 1984.

Among other activities, several MSHA programs that provided special aid to coal mines having above-average injury rates were successful in reducing rates at nearly 70 percent of participating mines. Significant programs to expand health activities included a new initiative to monitor the effectiveness of lung x-ray surveillance of coal miners as well as increased monitoring of toxic substances at selected coal and noncoal mines.

An MSHA-produced program graphically depicting fatal accident causes and circumstances over several years continued to be well received by the mining industry as a valuable miner training tool. During the fiscal year, the descriptive program, which used a 35-millimeter slide format was distributed at no charge to interested mine managers and safety officials. It was further refined as a continuing education tool to better reflect specific types of

mining activities, accident categories and varying mine environments. Other materials that were issued during the year to aid industry miner training capabilities included safety training and hazard recognition materials dealing with the use of vehicle seatbelts, mine ventilation practices, the special on-the-job dangers facing supervisors and foremen, and the hazards of alcohol and drug abuse in mining.

Following publication of a series of articles on substance abuse in MSHA's magazine, the agency participated in formation of a joint industry-labor-governmental committee to address problems of alcohol and drug abuse at mine sites. Committee members later took part in congressional hearings on the abuse of substances on the job.

In emphasizing cooperation and communication with management, labor and State agencies throughout the country in activities to safeguard miners' health and safety, the agency also sponsored or took part in a number of conferences and symposiums.

Several projects to review thoroughly eight priority sections of MSHA's metal and nonmetal regulations and major coal mine safety rules to update and clarify them, and to remove needless burdens on those affected by the regulatory process continued in fiscal 1985. A new final rule on fire control and prevention in metal and nonmetal mining became effective in April 1985, and a final rule on the safe loading, hauling and dumping of materials was near publication by the end of the fiscal year. Proposed rules being prepared at that time included those governing explosives use at coal and noncoal mines.

Among other agency programs and activities, the number of civil penalty assessments for violations of the Federal Mine Safety and Health Act by mine operators increased 5.4 percent, and the dollar amounts collected increased more than 20 percent during fiscal 1985.

Following the disastrous earthquake in Mexico City in September 1985, MSHA mine emergency and rescue specialists joined the international rescue effort there, and, through use of sophisticated sensing equipment, helped locate and save the lives of several victims.

It should be noted that, in the following sections, some data on accident rates, inspections, and investigations are preliminary, and subject to slight changes later.

Coal Mine Safety and Health

During fiscal 1985, MSHA oversaw coal miners' safety and health at 2,460 underground mines, and 4,493 surface mines and surface facilities under the Agency's jurisdiction.

Coal mine inspectors, technical specialists, education and training specialists, and supervisors operated from 10 district offices, 18 subdistrict offices and 68 field offices. At the end of fiscal 1985, the coal mine safety and health work force numbered 1,637.

During fiscal 1985, MSHA made 68,448 coal mine inspections and investigations. Of these, 49,492 were at underground mines and 18,956 were at surface mines and noncoal producing facilities.

MSHA issued 101,046 citations and orders to coal mine operators and independent contractors for violations of safety and health regulations. Supervisory officials held 2,000 annual health and safety conferences to discuss inspectors' findings at the request of mine operators or labor representatives.

Coal mining fatalities numbered 102 in fiscal 1985, up from 90 in fiscal 1984 and the recordbreaking low of 76 in fiscal 1983. This total, however, is the third lowest number of fatalities recorded in the history of coal mining. Further, 27 of these 102 fatalities occurred in the Wilberg Mine (Utah) disaster in December, 1984.

The fatal incidence rate for fiscal 1985 was .06 deaths per 200,000 employee hours, compared to .05 fatalities during fiscal 1984. However, the incidence rate for all types of injuries in coal mining declined from 6.59 per 200,000 in fiscal 1984 to 6.29 in fiscal 1985.

Of the 90 coal mine fatalities experienced in fiscal 1984, a total of 32 were due to falls of roof, face or ribs (walls) in underground coal mines. The number of roof fall fatalities decreased from 32 in fiscal 1984 to 22 in fiscal 1985, a decrease of 31 percent. It is strongly felt that the Roof Evaluation-Accident Prevention (REAP) program, initiated in April of 1984, has had a significant impact on reducing the number of such accidents which have historically been the most frequent cause of coal mine fatalities.

The average number of coal mining employees (excluding off-ice workers) declined from 199,978 in fiscal 1984 to 192,009 in fiscal 1985.

MSHA investigated 205 complaints of safety- or health-related discrimination that coal mine personnel filed with the agency during the fiscal year. The agency also opened 52 investigations into possible knowing or willful violations of coal mine safety or health regulations.

MSHA's Nonfatal Days Lost (NFDL) accident reduction program included 172 coal mines during its 1985 operating year (July-June). As in fiscal 1984, the mines chosen for this program had injury incidence rates above the average for their district or the nation. MSHA offers special help in eliminating the underlying causes of accidents at each mine in the NFDL program. Success depends on the active participation of management, miners and their representatives.

In fiscal 1985, about 68 percent of the mines in the NFDL program succeeded in reducing their injury rates.

During the fiscal year, MSHA increased its emphasis on improving health conditions at mine sites through its Improved Compliance Program (ICP). Under this program, extra attention is focused on identifying and correcting specific health-related problems at selected operations. The major thrust of the 13 projects initiated during fiscal 1985 by MSHA's 10 districts is directed toward reducing dust levels at longwall, roof bolter and continuous ripper mining operations.

The decline of miner participation in the X-Ray Surveillance Program created great concern to both MSHA and NIOSH. Several projects were initiated in fiscal 1985 to understand the reasons for the decline and to reverse the downward trend. MSHA training specialists talked with several hundred coal miners regarding what the miners knew about the program and why they did or did not take x-ray examinations to determine the absence or presence of lung damage due to long exposures to excessive coal dust levels.

This information was submitted to NIOSH, where it will be developed, with MSHA's cooperation, into informational and educational material to inform individuals and organizations about the x-ray program. MSHA also plans to accompany and assist NIOSH personnel visiting the mines and surrounding communities involved in the fourth round of the National Study of Coal Workers Pneumoconiosis to show our support of this program.

Additionally, a joint MSHA/NIOSH committee was formed to discuss problems and consider different approaches, such as: reviewing the NIOSH x-ray regulations; revising administrative procedures; and improving coordination between both agencies. These efforts are scheduled to continue at least into next year.

In fiscal 1985, MSHA began a program to increase its industrial hygiene activities at mine sites. The initial phase of the program called for toxic substance inventories to be made at 5 percent of the nation's coal mines, emphasizing preparation plants, coal testing laboratories and shops. Miners' exposures were measured at installations suspected of having possible overexposure situations.

A mine fire which resulted in the deaths of 27 miners occurred on December 19, 1984, at the Wilberg Mine, Emery Mining Corp., Orangeville, Utah. Although the fire was periodically controlled, the firefighting operations were not ultimately successful, and the mine was sealed with the 27 miners still in the mine. A team of MSHA investigators from the headquarters and district offices began an investigation on December 28. Unsealing operations began in late February 1985, and all of the mine was recovered by the end of the fiscal year except the fire area.

Because the fire area was sealed, the investigation team was precluded from conducting the physical investigation underground following the disaster. However, the team performed investigatory work at the surface work areas of the mine, researched records, and collected background information. In succeeding months, taking sworn statements from 102 management, labor, State, and MSHA personnel who had knowledge pertaining to the accident, recovery attempts, firefighting operations, or conditions and practices at the mine prior to the accident.

By the end of fiscal 1985, planning was well advanced for overcoming remaining obstacles toward full recovery of the fire area and conduct of the underground investigation early in fiscal 1986.

Two other multiple fatal roof fall accidents were investigated during the fiscal year. These were at the DMC Energy, Inc., No. 1 mine, and the Flat Rock Coal Co. No. 4 mine. Also, an investigation was started at the R & R Coal Co.'s No. 3 mine, where three miners were fatally injured by exposure to hazardous levels of carbon monoxide.

The 1985 National Mine Rescue and First Aid Contest was held September 25-27. This year the contest was conducted under a format suggested by the mining industry. Preliminary and final mine rescue events were held, a first aid contest was conducted, and a benchmen's (equipment maintenance and repair) event was added. The contest provided the impetus for effective technical training in mine rescue and first aid.

MSHA has a long tradition of advising and aiding State mining agencies and those of other nations that request such cooperative assistance in dealing with special mine safety or health problems. This was also true during fiscal 1985. In one such instance, following a coal mine explosion in Brazil, MSHA sent two mining engineers there at the request of the Brazilian Government to observe mining conditions and to help Brazil's mining agency find ways of preventing future mine explosions.

Metal and Nonmetal Mine Safety and Health

In fiscal 1985, MSHA's metal and nonmetal mine safety and health programs covered 11,236 mining operations, comprised of 399 underground mines and 10,837 surface mines, quarries, sand and gravel operations and mineral mines.

Metal and nonmetal mine inspectors and specialists operated from 6 district offices, 12 subdistrict offices, and 53 field offices throughout the Nation. The activity's workforce numbered 561 employees.

During the fiscal year, 15,071 complete regular inspections were made at metal and nonmetal mines and mills. Another 1,030 regular inspections were made at mines that were not actively producing—for example, operations with only a crew performing maintenance work.

Metal and nonmetal mine inspectors issued 23,619 citations and orders during the fiscal year. Inspectors made 5,736 compliance followup inspections to check for correction of violations that had previously been cited.

About 922 other inspections were made at gassy mines (mines that liberate explosive methane gas), at electrical installations, at mines using hoisting equipment, and during shaft sinking.

At the request of management or labor, 402 health and safety conferences were held with supervisory personnel to discuss inspectors' findings in citations and orders.

According to preliminary data, there were 68 fatalities in metal and nonmetal mining during fiscal 1985, compared to 75 in fiscal 1984.

The industry experienced 8,102 total injuries in fiscal 1985, compared to 9,078 in fiscal 1984, a decrease of about 11 percent. The fatal incidence rate was at .04 for both years. The all-injury incidence rate was 4.24 for fiscal 1985 compared to 4.37 for fiscal 1984. This represents about a 3 percent decrease. The number of employee hours in the metal and nonmetal industry for the period decreased by about 2 percent.

Metal and nonmetal mine training specialists conducted 1,839 classes, meetings and visits to mine sites during the fiscal year.

The Metal and Nonmetal safety division, in cooperation with MSHA's Technical Support Approval and Certification Center, brought on line a new computer system designed to track and facilitate the inspection of specific permissible diesel equipment in gassy mines by make, model, approval number or serial number. This is considered especially important if problems are identified in equipment previously approved for safe, healthful use. The new system permits an inspector to maintain a continuous history of permissibility inspections to each machine.

Special investigations were made in response to 59 complaints of discrimination under the Act and 124 possible knowing and willful violations involving corporate agents.

Enforcement personnel also made 228 inspections or investigations in fiscal 1984 in response to hazard complaints.

Two special emphasis programs continued during the fiscal year. They were the Program in Accident Reduction (PAR) and Compliance Assistance Visits (CAV's).

The Program in Accident Reduction (PAR) included 44 operations with injury rates significantly higher than the national average. Mines in the PAR program received extra consultative help with safety programs, job safety analysis, accident prevention, and safety awareness.

Between October 1984 and June 1985, PAR operations achieved a 38 percent reduction in lost workday injuries and a 34 percent reduction in their injury incidence rate. Compliance Assistance Visits (CAV's) also continued in fiscal 1985. At the operators' request, inspectors made 1,609 consultative visits to mines that were opening for the first time, resuming operations, opening new sections, or installing new equipment. On CAV's, inspectors issued 9,739 notices of violation, which carried no penalties. Citations are not issued on these visits. On the next regular inspection, however, inspectors check to make sure any violations noted on the CAV have been corrected.

In fiscal 1983, MSHA began a study of 60 metal and nonmetal operations that were using waste chemicals or waste oils as supplemental fuel sources and as dust suppressants on roadways to identify potential health problems and recommend safe handling procedures for these materials.

During fiscal 1984 and 1985, evaluations were made of 29 of these operations, including all that were believed to be relatively more hazardous. No worker overexposure to toxic airborne contaminants was found. However, the potential existed at several operations for skin contact with the waste chemicals and oils.

As part of the Metal and Nonmetal's activity's internal control program, evaluations were conducted of practices in the northeastern and southeastern districts.

Assessments

During fiscal 1985, the Office of Assessments assessed civil penalties for 129,142 violations of the Federal Mine Safety and Health Act and of mandatory safety and health standards. This represents a 5.4 percent increase over fiscal 1984. Total penalties

assessed were \$11.4, million, an increase of \$2.7 million over the previous year. The amount collected also increased, from \$7.4 million in fiscal 1984 to \$9.6 million in fiscal 1985.

The assessment office continued to assess violations by mine operators in a timely and accurate manner, reviewing all citations for consistency and completeness before issuing the civil penalties. Problem areas identified during the review process were promptly remedied, resulting in a continuing decrease in the number of violations that required corrective action, and the issuance of significantly fewer amended proposed assessments.

Of the total violations assessed during the fiscal year, 3,136 or 2.4 percent were contested on various grounds by mine operators and received a hearing before the Federal Mine Safety and Health Review Commission. This percentage of the total violations assessed was a slight increase over that in fiscal 1984.

About 85 percent of the penalties assessed were collected without formal collection action, a figure consistent with previous years. A contracted commercial collection agency continued to provide an interim step between the MSHA Office of Assessments and the Office of the Solicitor. During fiscal 1985, the second year of the contract, \$1,709,901 in overdue penalty cases was forwarded to the collection agency. During fiscal 1985, \$464,523 in collections were credited to the collection agency.

Standards, Regulations and Variances

The Office of Standards, Regulations and Variances, which coordinates MSHA's rulemaking, continued to review major groups of mine safety and health regulations. These reviews were intended to bring MSHA's regulations up to date, clarify them, close gaps, remove needless burdens, and make the rule book easier to use. The reviews were consistent with the objectives of Executive Order 12498, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act.

To achieve its aims, MSHA worked to identify any duplicative or unnecessary standards. It sought to provide alternative means of compliance and incorporate technological advances. Other goals were to eliminate incorporations by reference and reduce the burden of recordkeeping and reporting on mine operators.

MSHA asked for comments from the mining community at each stage of the review process. All comments were closely studied by committees charged with composing the revised regulations. These committees included experienced inspectors, engineers, and regulatory specialists.

On January 29, 1985, MSHA published a final rule updating its standards on fire prevention and control in metal and nonmetal mines. The final rule became effective on April 15, 1985.

MSHA continued its review of eight priority sections in the metal and nonmetal mining standards. Proposed rules were published covering loading, hauling and dumping (December 18, 1984) and gassy mines (June 4, 1985). Public hearings were held to discuss the loading, hauling and dumping proposal in August 1985, and a final rule was being developed at the end of the fiscal year. Additionally, final rules for ground control and machinery and equipment were near publication at the close of the fiscal year.

Proposed rules were being prepared on three more metal and nonmetal sections: those on explosives, electricity, and air quality.

On January 29, 1985, MSHA published a request for comments on its radiation standards. The comment period was subsequently extended until June 3, 1985, and a preproposal draft was near completion at the end of the fiscal year.

A major review of underground coal mine safety standards also continued in fiscal 1985. MSHA held open conferences at the close of fiscal 1984, and proposed rules were being prepared on roof support, explosives and blasting and the related approval schedules.

As part of the same review, a preproposal draft of the ventilation standards was near completion at the close of the fiscal year.

MSHA continued to review public comments on a draft rule covering approval of mining equipment which was released for public comment in fiscal 1983. The draft suggested an alternate, expedited procedure under which an applicant or independent laboratory could perform required product tests. The applicant could then certify that specific technical requirements were met. The agency was near completion of a proposed rule at the end of the fiscal year.

Other regulatory topics under review during the fiscal year included a 1980 proposed rule to implement "pattern of violations" provisions in MSHA's law. On February 8, 1985, MSHA withdrew the 1980 proposal and released a revised preproposal draft to the public. A proposed rule was near completion at the end of the fiscal year. Additionally, on March 22, 1985, MSHA published a request for comments concerning its mine plan approval process. The comment period closed on May 21, 1985, and a proposed rule was being developed. The agency was also preparing a proposed rule on updating fees associated with equipment approvals.

Technical Support

MSHA's Directorate of Technical Support provides engineering and scientific expertise upon request of other program areas of MSHA and the mining industry. Investigations, laboratory testing and analyses, and other technical assistance are conducted to solve complex problems in areas such as mine ventilation, hazard identification, electrical systems, safe use of mine equipment, roof control, and exposure of miners to toxic materials and harmful physical agents.

During fiscal 1985, technical support personnel responded to five mine emergencies including the Wilberg Mine disaster. Around-the-clock gas monitoring was provided during the period to meet rescue and recovery needs, as well as engineering, analytical and logistical support for these emergencies.

In the wake of the disastrous earthquake in Mexico City in September 1985, two technical support engineers, along with a subdistrict manager from MSHA's metal and nonmetal activity and a consultant from Westinghouse Corp., joined the team of Federal rescue specialists sent to assist in the massive, international search effort for survivors trapped beneath collapsed buildings.

The MSHA specialists used "geophones," electronic sensing devices capable of detecting vibrations from sources several hundred feet below ground. This tool, developed for use in underground mine emergencies, actually helped to locate and save some of the Mexican quake victims trapped amid the rubble.

The Federal rescue team was assembled at the request of the U.S. Department of State. The MSHA rescue specialists spent 6 days at the disaster site.

A total of 580 in-mine and 195 laboratory investigations were completed. Of these, 82 field investigations were conducted on noise control in the mining environment. Eight kinds of earmuff-type protectors were evaluated for use in a variety of occupations and different kinds of mining equipment. Initial results indicate that the amount of protection provided by hearing protectors varied but, in most cases, were significantly less than the manufacturers' quoted values.

Technical Support processed 140,000 respirable coal mine dust samples received from mine operators. Implementation of a self-checking quality control system on the Automatic Weighing System insured the accuracy of sample weighings and enhanced the efficiency of processing respirable dust samples. A total of 21,747 samples submitted for compliance determination were analyzed. Personnel also calibrated 4,642 noise and radiation sampling instruments for inspectors.

Technical Support completed 188 engineering design plans for coal mine waste impoundments. In addition, 704 Office of Surface Mining plans were processed in fiscal 1985.

MSHA's Approval and Certification Center completed 5,300 approval actions on new application requests received from manufacturers of mining equipment, materials, and instruments. Efforts continued to reduce backlogs of approval actions, and to work more efficiently with manufacturers to improve the testing and approval process.

In fiscal 1985, 120,000 occupational accident, injury and illness reports also were processed and analyzed. Results of these analyses were distributed to MSHA management and the mining industry.

During the fiscal year, Technical Support reorganized and combined operations at its Denver facilities to effect cost savings and organizational efficiencies.

A report titled, "Two-Entry Longwall Mining Systems — A Technical Evaluation," was prepared for Assistant Secretary David A. Zegeer to address questions raised by the Wilberg Mine disaster in Utah. The investigation was directed at all commonly employed practices and equipment used in longwall mining and any effect on a miner's safety or health which may accompany these practices or equipment in a system using two entries driven through working areas of underground coal mines. This report, which contained specific safety and health-related recommendations, is the most definitive technical evaluation of longwall mining systems ever conducted in the United States.

During the data-gathering phase, all mines actively using a two-entry longwall mining system were visited, as were several mines using three-entry longwall mining systems at depths of more than 1,000 feet. A public meeting also was held to receive the views of representatives of mining companies, mining associations and the United Mine Workers of America regarding two-entry longwall mining systems.

Two study task forces made available reports on development of a belt-worn, self-contained self-rescuer and on the use of diesel-powered equipment in underground mines. Meetings with industry and other interested parties were under way at the end of the fiscal year to resolve possible policy questions regarding use of such equipment.

Educational Policy and Development

During fiscal 1985, MSHA's Office of Educational Policy and Development (EPD) coordinated MSHA policy on mine safety and

health training. The office also supervised the National Mine Health and Safety Academy in Beckley, WV, administered the agency's State grants program, and provided support nationwide for voluntary safety organizations.

The EPD office directed production of slide and illustrated abstracts depicting the circumstances of mining deaths, and responded to many requests from the mining community for the safety, education program which is available to industry and labor at no charge. To achieve optimum use of the program by mine operators and others, the office categorizes mine deaths by type of mining and mining activity being performed at the time of the accident, allowing the illustrated program to be tailored to a mine's specific safety training needs and particular mining conditions.

During fiscal 1985, the office also published a training administrative manual for MSHA's miner training and retraining regulations which rescinds all previous policy documents and presents regulations, standard by standard, with corresponding policies. The manual has been simplified and clarified for easier use.

More than 11,000 copies had been requested and obtained by the mining community by the end of fiscal 1985.

By the end of the fiscal year, the office also developed draft administrative manuals for training standards for sand, gravel, and crushed stone operations and for underground metal and nonmetal mines. These manuals provide MSHA and industry personnel with definitive reference guides to all MSHA policies and regulations related to training.

A model on-the-job training program which can be tailored to needs of individual mines is being developed in cooperation with State, industry and labor representatives. Supervisory training packages also have been developed and are being used by industry. The office also conducted a mine ventilation awareness program and a seat belt safety program and made appropriate training materials available to industry.

In fiscal 1985, 43 States took part in MSHA's State grants program, which funds State mine safety activities, including miner training. A total of \$5,170,000 was granted to the States during the fiscal year, and 116,000 miners were trained in MSHA-supported programs.

To aid the States in making their grant programs more effective, the EPD office sponsored a conference to promote coordination among States and MSHA and to share ideas and expertise on achieving the best possible uses of grant funds to improve health and safety training of miners.

During the fiscal year, about 15,294 people from industry, labor, State organizations and MSHA took part in diverse programs at the National Mine Health and Safety Academy. The Academy also published and distributed numerous print and audiovisual publications and presentations, and hosted several safety and health symposiums and conferences for the mining community.

The voluntary Holmes Safety Association, which provides management and labor with opportunities to hold mine safety meetings using materials supplied by the association, continued to have a strong presence in the Nation's mining areas.

At the end of the fiscal year, the MSHA-supported association had a membership of more than 365,970 in 50 States. It was estimated that more than a million people attended meetings of the association's 3,926 chapters and 49 councils during fiscal 1985.

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Office of Labor-Management Standards

During fiscal 1985, the Office of Labor-Management Standards (OLMS) closed 460 embezzlement cases involving all types and sizes of unions located throughout the country. Included in this figure are cases referred to the U.S. Attorney for legal action; cases which the U.S. Attorney declined to prosecute for a variety of reasons such as the dollar amount involved, the age or health of the subject, or the fact that the subject had made restitution to the union; and cases where no violations were found. Most of these cases were opened on the basis of complaints received or as a result of the Compliance Audit Program (CAP).

During the fiscal year, 152 criminal actions, amounting to approximately \$1.3 million in embezzled funds, were initiated. These actions resulted in 132 convictions and pretrial diversion agreements. Approximately \$765,000 in embezzled funds were recovered and \$55,000 in fines were imposed as a result. At the end of the year, 39 criminal actions were still pending.

During the fiscal year, the agency completed 1,494 Compliance Audits. The CAP is a streamlined audit/investigative program aimed at local unions. It is designed to detect LMRDA violations in a minimum amount of time, by the use of specialized auditing, investigating, and report-writing techniques. The CAP also helps to establish a visible enforcement presence in the labor community, and provides compliance assistance directly to labor union officials. A total of 178 fallout embezzlement cases from CAP's were opened in fiscal 1985.

In addition to possible embezzlements, CAP cases led to the discovery of an assortment of other types of Labor-Management Reporting and Disclosure Act (LMRDA) violations such as deficient reports, failure to maintain records necessary to verify the annual financial reports, inadequate records, no bonding or inadequate bonding, and failure to file constitution/bylaw changes. Attempts are made to have these unions remedy such violations through voluntary compliance; and in most instances, violations are corrected without recourse to legal action.

Since OLMS is committed to a program of compliance assistance, CAP enables it to deliver meaningful, grassroots help to union officers based on firsthand knowledge of an organization's

particular problems and circumstances. Investigators routinely provide advice and recommendations to union officials during the exit interview.

The International Compliance Audit Program (I-CAP) has become an integral part of OLMS efforts to safeguard union assets and ensure compliance with the LMRDA. With I-CAP's specialized auditing techniques, 47 audits have been conducted since 1982 including 13 in fiscal 1985. As with CAP, the I-CAP has uncovered numerous civil violations mostly pertaining to LMRDA reporting requirements. A majority of these violations were remedied through voluntary compliance by the unions involved.

To obtain proper compliance with title II of the LMRDA, a high level task force was established. It compared the filing dates and contents of employer and consultant reports received from 1980 to the present to identify delinquent and deficient reports, to obtain proper compliance, and to develop an ongoing cross-checking system. As a result of this review, 511 deficiency and delinquency letters to filers were dispatched and 421 reports were filed.

LMRDA provisions intended to ensure that union members have fair and democratic elections for their leadership positions constituted the major civil enforcement activity. Because of the statutory time limitations, election investigations must be conducted expeditiously, and consequently these investigations hold a very high enforcement priority.

The agency received 203 election complaints and 15 trusteeship complaints during the fiscal year. Thirty-nine civil actions were filed challenging elections (three of which were CSRA cases). Major investigations of national union elections included the Screen Actors Guild with 39,000 members, National Maritime Union with 32,900 members, American Federation of Government Employees with 210,000 members, and Masters, Mates and Pilots with 9,000 members. Another major investigation involved a 90,000 member local in New York City, Local 1199, Drug, Hospital, and Health Care Employees of the Retail, Wholesale, and Department Store Union, AFL-CIO. A supervised election of the American Postal Workers Union was completed with approximately 99,000 members voting.

The agency reviewed and analyzed officer election procedures of 18 national, intermediate, and local unions and provided advice and assistance for union compliance with the LMRDA. In addition, preelection assistance was provided upon request to 10 national and international unions prior to and during the conduct of their officer elections.

Work continued on Supplement II to the *Union Officer Elections and Trusteeships Case Digest*. The supplement will contain

summaries of court and administrative cases resulting from the enforcement of the election and trusteeship provisions of the LMRDA since 1983.

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Bureau of Labor-Management Relations and Cooperative Programs

The Department's Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP), established in 1984, continued to promote cooperative labor-management programs and to encourage the development of quality of work life and employee involvement programs. The Bureau analyzed and reported on issues in the field of labor-management relations, provided extensive research on industrial relations, and administered employee protections programs for those adversely affected by Federal legislation.

Cooperative Programs

During fiscal year 1985, the Bureau continued to act on the belief that cooperative labor-management programs will improve both the productivity and the competitiveness of the United States. Through the Bureau's activities, labor and management practitioners at all levels were able to share information about innovations in the area of labor-management relations.

The Bureau conducted or cosponsored 35 conferences and symposia with national, regional or local organizations in fiscal 1985. These programs addressed regional concerns of a specific industry such as health care and printing. A symposium was held in New England to explore public sector cooperative labor-management relations. The Bureau cosponsored five statewide conferences to encourage joint labor-management initiatives to examine problems of mutual concern. For example, a three-day conference was held on the role of cooperative labor-management relations in the future economic development of Alabama. Labor and management leaders and practitioners and neutral third-parties from academia and Government met to discuss issues related to the productivity and competitiveness of industry in the State and in the nation.

The Bureau produced 15 publications in a variety of formats. In fiscal 1985, the Bureau sent brochures, monographs, sourcebooks and labor-management cooperation briefs to the over 4,500 labor, management and neutral practitioners on the Bureau's

mailing list. These publications included case studies, such as a report on AT&T and CWA's Quality of Worklife Program After Three Years, reports of meetings to discuss emerging issues in labor relations, and detailed resource guides such as the "Film/Video Sourcebook for Cooperative and Employee Involvement Program." These publications educate the Bureau's growing audience about joint labor-management efforts to improve productivity and enhance the quality of working life.

The Bureau continued to conduct 3-day workshops to prepare State agencies to assist labor and management in mitigating the repercussions of plant closings and mass layoffs. A key objective of the workshops is to make the participants aware of how in-plant labor-management committees and the techniques of labor-management cooperation can assist them in responding to the needs of workers who have lost their jobs. In fiscal 1985, Bureau staff conducted workshops in five States.

Under title IV of the Job Training Partnership Act, which provides funds for experimental employment and training programs, the Bureau administered grants of \$225,000 to nine Area Labor-Management Committees. The committees are creating demonstration projects describing their ability and willingness to help communities minimize the impact of plant closings and to assist local business to flourish.

The Bureau cosponsored a year-long computer teleconference on "Changing Union-Management Relations" involving eight representatives from labor, eight from management and six neutral parties.

Industrial Relations and Legislative Affairs

Bureau staff focused on a wide range of issues in labor relations law and related fields including the Labor-Management Notification and Consultation Act. The bill, which neared a floor vote as the fiscal year ended, requires advance notice of plant closings or mass layoffs.

Secretary Brock announced the Department's strong opposition to the bill, citing his intention to name a high level Task Force on Economic Adjustment and Worker Dislocation. The Task Force will study the issues involved in plant closings and worker dislocation, evaluate current programs and policies at all levels of government, and examine foreign experience in this area.

The staff also reviewed legislative proposals on issues such as employee protection as well as amendments to other labor laws.

The Bureau prepared weekly and supplementary reports to keep agency officials on top of developments in these and other areas.

Agency officials and staff continued to participate in departmental activities in international labor relations by preparing background and position papers in connection with program activities of both the Organization for Economic Cooperation and Development (OECD) and the International Labor Organization (ILO). At the April meeting of the OECD's Working Party on Industrial Relations, the Deputy Under Secretary represented the United States and presented a paper on labor-management cooperation and productivity.

Major collective bargaining negotiations during the fiscal year occurred in the auto industry between the United Automobile Workers and both American Motors and Chrysler; and in the trucking industry between the Teamsters and both general freight and automobile transporters. To forestall a possible strike by the United Transportation Union, the President established an Emergency Board on August 30 to investigate and report on the dispute between the union and the National Railway Labor Conference, the representative of most of the Nation's major railroads. That Board issued its report near the end of the fiscal year.

In other major negotiations, Government involvement was limited to mediation assistance. The Secretary and other key Government officials were kept apprised of the status of these and other negotiations, as well as of related developments in the industrial relations arena, through a combination of weekly reports and briefing papers.

Research and Analysis

In 1984, the Bureau established a library to house current articles on labor-management cooperation. During fiscal 1985, the library was expanded to include information about technological change and plant closings. The library consists of approximately 1,250 articles and books, most of which have been annotated and placed in the computer. They are retrievable as lists of selected references on a variety of related topics.

During fiscal 1985, the Bureau's research program granted eight contracts for a variety of case studies, six of which dealt with labor-management cooperation. Under these contracts, researchers will examine the Ford-UAW National Development and Training Program; cooperative activities involving City of Boston employees and the Service Employees International Union (SEIU); cooperation at Captain Mine of the Archer Minerals Corporation involving the United Mine Workers of America (UMWA); the joint labor-

management participation teams at the Johnstown Plant of the Bethlehem Steel Corporation with the United Steelworkers of America (USWA); cooperation at the New Jersey plant of Ethicon, Incorporated, with the Amalgamated Clothing and Textile Workers Union (ACTWU); and cooperation, labor representation on the board of directors, and employee stock ownership at Eastern Airlines. In addition, Georgia State University will conduct six case studies on contemporary collective bargaining and labor-management relations. The Bureau's final contract is a case study concerned with the impacts of technological change in an office environment, specifically, the computerization of the Minneapolis, Minnesota, Emergency Communications System. The case studies will be published upon their completion in 1987.

Several studies are in progress from contracts signed in fiscal 1984. By mid-year fiscal 1986, a case study of labor-management-university cooperation to prevent a plant closing and a study of pay-for-knowledge compensation systems are expected. Some preliminary products may also be available from a panel study of changes occurring in labor-management relations. A mid-study conference was held in June 1985 at the Massachusetts Institute of Technology (MIT) to assess the progress of the project and to map out directions for the rest of the study. Researchers from MIT's Sloan School of Management, labor and management representatives from the sites under study, and the Bureau participated in the conference.

The Bureau prepared several position and background papers for the Organization for Economic Cooperation and Development (OECD) and the International Labor Organization (ILO) meetings and drafted speeches for other Department executives. Continuing its involvement in the research community, the Bureau participated in the Industrial Relations Research Association, the Columbia University Seminar on Labor, and an informal group of directors of university industrial relations centers.

Employee Protection-UMTA

The Bureau certified 1,140 grant applications in fiscal 1985. The most important development in the certifications unit in fiscal 1985 was the decision rendered by the U.S. Court of Appeals for the District of Columbia in the Amalgamated Transit Union (ATU) v. former Secretary of Labor, Raymond J. Donovan, a case involving the Metropolitan Atlanta Rapid Transit Authority (MARTA). The suit was brought against the Secretary of Labor in June

1982 to prevent the Secretary from certifying employee protective arrangements under section 13(c) of the Urban Mass Transportation Act.

The union argued that the Secretary could not certify the arrangements for MARTA because a 1982 Georgia statute withdrew MARTA's authority to bargain collectively with the union and changed the procedures for interest arbitration. The State law requires wage issues be submitted to interest arbitration only upon the consent of both parties. The union contended that the Department of Labor could not certify protective arrangements subsequent to the 1982 amendment to the Georgia statute because that certification did not provide for "the continuation of collective bargaining rights" as required by section 13(c) of the UMTA Act.

On July 9, 1985, the U.S. Court of Appeals for the District of Columbia reversed the district court decision, which had upheld the Secretary. The court, therefore, concluded that the MARTA amendments do not provide for the continuation of collective bargaining rights under section 13(c) and that a 13(c) arrangement subject to the 1982 amendments to MARTA's enabling statute could not be certified. In the matter of interest arbitration, the court held that, while section 13(c) does not entitle transit workers to binding arbitration, it does require some form of dispute resolution procedure.

On September 6, 1985, the U.S. Court of Appeals for the District of Columbia denied the Secretary of Labor's petition for rehearing. Shortly thereafter, the Court granted a stay of 30 days for the issuance of a mandate in the case until October 15, 1985. Although the Solicitor of Labor recommended that the Solicitor General file a writ of certiorari in the Supreme Court on this case, the Appeals Court issued a mandate on October 16 and the Secretary of Labor is now awaiting instructions to revoke the certification of MARTA's 13(c) agreement. Without this certification, MARTA would not be eligible for Federal transit assistance.

Litigation is also pending in *ATU v. Donovan* (No. 84-5623) in which the Union and several of its locals challenge the Secretary's certification in connection with applications made by the Chattanooga, Memphis and St. Louis transit authorities for UMTA funds. In each of these applications, the Secretary certified the employee protective arrangements without the inclusion of the interest arbitration procedures in the 13(c) agreement. The court ruled in MARTA that section 13(c) does not require binding arbitration but does require some dispute resolution procedure (at least mandatory fact-finding). The Department, therefore, has modified its certifications for properties where interest arbitration

had previously been deleted by inserting a requirement that the parties negotiate in good faith over alternative dispute resolution procedures and report on the progress of the negotiations within a specified time period.

Redwood Employee Protection Program

During fiscal 1985, most of the activity in the Redwood Employee Protection Program (REPP) concentrated on appeal determinations and pension determinations. In fiscal 1985, 29 requests for appeals were made and 152 determinations issued. Currently, 126 appeals are pending. A total of 1,050 files were reviewed for pension determinations, and 272 awards of benefits were made to claimants. The remaining 778 files reviewed consisted of denials of benefits or decisions to be made on claimants still remaining on the program where pension determinations will not be made until these claimants reach the age of 65 or are severed from the program.

The Redwood Employee Protection Program processed 2,949 health and welfare claims and approved approximately \$700,000 in combined pension and health and welfare benefits for fiscal 1985.

Office of Pension and Welfare Benefit Programs

The Office of Pension and Welfare Benefit Programs (OPWBP) underwent a major reorganization in fiscal year 1985 to improve its ability to administer and enforce the Employee Retirement Income Security Act of 1974 (ERISA).

The reorganization included significant changes in the enforcement area which affected both the structure and method of program operations. Field offices, consolidated from 25 to 15 nationwide, were given increased authority to initiate and conclude investigations, while the national office program established for the first time a specialized investigative unit. The program recovered over \$51.2 million during the year through voluntary settlements and civil court actions, and conducted a record 35 criminal investigations.

The National Pension Forum, established in 1984 to examine the Department's history and effectiveness in administering ERISA, issued its final report in fiscal 1985. Its recommendations included the development of an electronic data base, the hiring of lawyers to conduct investigations, and the exploration of the concept of a self-regulatory organization.

In the area of information resource management, the Department continued its study on electronic filing of ERISA annual reports by developing and implementing a pilot to demonstrate filing with a sample of pension plans. The Department also recommended the creation of an interagency working group to examine the results of the study and prepare a recommendation based on the study's findings. The Department, at the request of the Office of Management and Budget, initiated two additional studies to develop cost/benefits to the public and look into other alternatives to electronic filing.

Regulatory activities during the year primarily dealt with the plan assets proposal. Over 700 written comments were received on the 1985 proposal, the majority focusing on the effect of the rule on venture capital and real estate investment programs.

The program also issued two class exemptions waiving the prohibited transaction rules on customer notes and certain short-term money market instruments and, out of 800 applications for exemption closed during the year, granted 232 individual exemptions, giving plans and employers greater flexibility to engage in

a variety of investment opportunities otherwise prohibited by ERISA. The backlog of applications at the end of the year was approximately 40 percent lower than the prior year.

Industry trends toward using pension funds to further corporate goals spawned studies, and corresponding public hearings, relating to the appropriate role of employee benefit plans in corporate governance issues and the need to assess plans' investment performance over time. These issues also led to the opening of investigations in individual cases.

There was also a renewed emphasis on upgrading the research data base. Research projects during the year produced findings that the financial health of the multiemployer plan universe has improved, while another study found that most women receive average pension benefits that are 56 percent lower than men's.

Veterans' Employment and Training

During fiscal 1985, the highlight of agency accomplishments was surpassing the goal of placing 30,000 Korean conflict and Vietnam era veterans in training positions under the Emergency Veterans' Job Training Act of 1983. By the end of the fiscal year, over 40,000 certified veterans (133 percent of the goal) had been matched through the Job Service system with certified employers offering jobs requiring significant training leading to permanent employment.

Enactment of Public Law 99-108 on September 30, 1985 extended this program, jointly administered by the Office of the Assistant Secretary for Veterans' Employment and Training of the Department of Labor and the Veterans Administration, until July 1, 1986.

Emergency Veterans' Job Training Program

As the most significant activity of the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) during fiscal 1985, the Emergency Veterans' Job Training Program provided training leading to permanent employment for over 40,000 veterans of the Korean conflict and the Vietnam era through training programs offered by employers. At the outset of the program, a goal of 30,000 such placements was established as an objective, one considered difficult but not impossible to reach. The goal having been exceeded by 33 percent, the program is considered very successful.

Established under the Emergency Veterans' Job Training Act of 1983 (P.L. 98-77), the program is a cooperative effort administered by OASVET of the Department of Labor and by the Veterans Administration. Certified employers are reimbursed for one-half of starting wages up to \$10,000, for each veteran hired for permanent employment in a job requiring significant training. The Department of Labor through OASVET is responsible for outreach activities and public information programs, and, operating principally through the State Job Service system, ensures matching of certified veterans with approved employers. The Veterans Administration is responsible for certifying veterans as to eligibility,

approving employer training programs, administering authorized funds, and making payments to employers.

On September 30, 1985, the President signed Public law 99-108 which extended to July 1, 1986, the time period during which employers must begin their approved training programs.

Job Training Partnership Act, Title IV-C Grants

The program under title IV-C of the Job Training Partnership Act (JTPA) which operates a variety of employment and training programs for veterans distributed \$9.7 million to over 90 grant recipients during Program Year 1984 (July 1, 1984 through June 30, 1985). JTPA grants were approved for virtually all the States to provide direct counseling, training and job placement of target group veterans. Eighty percent of funds made available to the States and local level organizations approved by the States are programmed on a matching fund basis. In many instances, these grants provide for participation of successful veterans and veterans' service organizations as a resource for aiding unemployed veterans. Veterans are receiving job training opportunities in other JTPA programs, including the title II projects for the economically disadvantaged and title III efforts to retrain displaced workers for new occupations.

Disabled Veterans Outreach Program and Local Veterans Employment Representative Program

The Office of the Assistant Secretary for Veterans' Employment and Training provided grants to States for the approximately 3,400 specialized veterans services positions located in the nearly 2,500 Job Service offices nationwide. Nineteen hundred of these specialized positions are Disabled Veterans Outreach Program specialists (DVOP's) who work not only out of local Job Service offices, but who are also stationed in such facilities as Veterans Administration hospitals and Vet Centers. Each DVOP specialist provides services only to eligible veterans in accordance with the priorities established by P.L. 96-466. These services include the provision of job referral and placement services, the promotion and development of training opportunities with employers, the provision of outreach through community agency groups and organizations, and the counseling and testing necessary to assist eligible veterans in overcoming their employment problems.

The other positions are some 1,500 Local Veterans Employment Representatives (LVER's) who make certain that veterans are given preferential assistance through the Job Service. LVER's

ensure that there is local supervision of employment service staff in carrying out the provision of service to eligible veterans in employment and job training programs. They maintain regular contact with employers, labor unions, veteran organizations, and community agencies promoting and facilitating assistance to eligible veterans. The DVOP's and LVER's were instrumental in the placement by State Employment Security Agencies of over 366,000 veterans for the period July 1, 1984 through March 31, 1985. (The Job Service is currently operating on a Program Year basis of July 1 through June 30.)

Veterans' Reemployment Rights

The Office of Veterans' Reemployment Rights continued to increase its efforts to provide reemployment assistance to veterans, reservists, and members of the National Guard and reflected a continued increase in the program's compliance production. The Office advised approximately 202,000 individuals of their reemployment rights at time of separation from active duty, responded to approximately 30,000 inquiries about reemployment rights, and opened and processed about 1,850 cases involving reemployment rights issues. About 97 percent of the cases were resolved without recourse to litigation.

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Office of the Solicitor

The workload of the Office of the Solicitor continued at a steady pace during fiscal year 1985. The national office received approximately 26,088 cases for litigation and 18,562 cases were received by the 16 field offices. More than 7,349 written opinions were issued.

The Supreme Court issued several important decisions in cases litigated by Solicitor's Office staff, including one reversing a prior decision of the Court concerning the Fair Labor Standards Act's minimum wage and overtime provisions. This fiscal year the Secretary received the largest judgment ever obtained in an Employment Retirement Income Security Act (ERISA) case when a judgment for \$36.5 million was entered for the participants and beneficiaries of the Southern Nevada Culinary and Bartenders Pension Trust.

In addition, the Department expanded the pilot program decentralizing selected ERISA litigation to the Atlanta and Boston regional offices. Several complaints were filed by the regional offices during the past fiscal year for fiduciary and prohibited transaction violations and one judgment has been obtained which will result in the restoration of \$100,000 in losses to the plan.

Civil Rights

During the fiscal year, the division participated in both litigation and regulatory work involving the equal employment and affirmative action obligations applicable to Government contractors under Executive Order 11246, section 503 of the 1973 Rehabilitation Act, and section 2012 of the Vietnam Era Veterans' Readjustment Assistance Act, as well as the nondiscrimination obligations applicable to recipients of Federal financial assistance under such laws as title VI of the 1964 Civil Rights Act, section 504 of the 1973 Rehabilitation Act, and the Job Training Partnership Act (JTPA). These efforts were related to the problems of equal opportunity for minorities, women, qualified handicapped persons, and certain veterans.

The year saw the filing of the first administrative action alleging sexual harassment as a violation of Executive Order 11246. *OFCCP v. Florida National Bank of Vero Beach*, Case No. 85-OFC-6. The case was in settlement negotiations at the end of the fiscal year.

The division resolved, without contested litigation, a major class action case of handicap discrimination against a railroad. In *OFCCP v. Missouri Pacific Railroad Company*, Case No. 85-OFC-3 (Nov. 29, 1984), the company agreed to pay a total of \$500,000 in back pay and pension contributions to 38 men who were rejected for employment on the basis of a preemployment physical at the company's mechanical shop in North Little Rock, Arkansas. The company agreed to stop using preemployment physical standards which screen out qualified handicapped individuals. A second handicap case against the railroad was settled with a monetary payment and an offer of reemployment to a former employee unlawfully terminated for a hearing defect. *OFCCP v. MOPAC*, Case No. 85-OFC-10 (June 6, 1985).

In *OFCCP v. St. Regis Corp.*, Case No. 78-OFCCP-1, the administrative law judge (ALJ) issued a favorable Recommended Decision on December 28, 1984. The judge held that St. Regis, a major wood and paper products company, violated the Executive order by discriminating against women in its initial hire, departmental assignment, job assignment, and termination practices. The judge recommended that St. Regis be debarred until it brings itself into compliance by providing remedies, including back pay, to the female discriminatees.

Several other significant decisions were issued under Executive Order 11246 and Section 503 of the Rehabilitation Act during the year. In *OFCCP v. National Bank of Commerce*, Case No. 77-OFC-2 (Dec. 11, 1984), the Under Secretary affirmed the ALJ's ruling that the Bank had violated the Executive order by failing to have and to make available for the Office of Federal Contract Compliance Programs' review an acceptable affirmative action program. The Under Secretary rejected the Bank's challenge to the Executive order's affirmative action goals and timetables requirements, holding that the order's goals are distinct from quotas and, therefore, did not conflict with title VII of the Civil Rights Act. In *OFCCP v. Sunshine Biscuits*, Case No. 81-OFC-2 (Dec. 3, 1983), the Under Secretary held that the pleading requirements in Executive order cases are no more stringent than those under Fed. R. Civ. P. 8(a)(2). In *OFCCP v. Brown Transport Corp.*, Case No. 79-OFC-20 (Dec. 3, 1984), the Under Secretary held that, because Brown was both licensed by the Government and had accepted payments from it, Brown was a covered Government contractor. In *OFCCP v. Western Electric*, Case No. 80-OFC-29 (April 24, 1985), a case concerning coverage under section 503 of the Rehabilitation Act, the Deputy Under Secretary for the Employment Standards Administration (ESA) issued a Remand

Decision. That decision reversed the ALJ's Recommended Decision which held that OFCCP's regulations are inconsistent with the Rehabilitation Act. Under the regulations, all of a contractor's employees are assumed to be covered by section 503 (i.e., "working on the contract"), unless the contractor obtains a waiver on the ground that particular employees' (or groups of employees) work is separate and distinct from the Government contracting activity. The Deputy Under Secretary held that the ALJ "lacked authority to rule on the validity of the waiver provision" and that an agency "must honor its own regulation unless, and until, it has rescinded or amended it after rulemaking proceedings." The case was remanded to the ALJ to determine whether Western Electric unlawfully discriminated in employment against the complainant. Finally, in *OFCCP v. Missouri Pacific Railroad*, Case No. 81-OFC-8 (Aug. 12, 1985), the Deputy Under Secretary for ESA adopted the ALJ's Recommended Decision and concluded that Missouri Pacific had violated section 503 by failing to evaluate, on an individual basis, applicants who had lost appendages.

During the fiscal year, the division won six challenges to OFCCP's activities under Executive Order 11246, section 503, and section 2012. Five of these defensive cases challenged OFCCP's findings of no violation on individual handicap or disabled veteran's complaints: *Schnolick v. Department of Labor*, C.A. No. 84-0042-F (D. Mass. March 20, 1985); *Nowell v. Donovan*, C.A. No. 83-5491 (E.D. Pa. June 16, 1985); *Clemenston v. Donovan*, C.A. No. 84-0732 (D. Hawaii Jan. 21, 1985); *Healy v. Shong*, C.A. No. CA83-0219-F (D. Mass. Aug. 9, 1985); *Taylor v. OFCCP*, C.A. No. 83-C-4940 (N.D. Ill. Aug. 8, 1985). In the sixth case, *Green v. Donovan*, C.A. No. 84-Z-541 (D. Colo. June 25, 1985), the plaintiff had asserted that OFCCP failed to enforce the Executive order's affirmative action provisions with respect to plaintiff's employer, Martin Marietta, and that OFCCP had unlawfully withheld documents under the Freedom of Information Act (FOIA). In five new cases, we filed motions for dismissal or for summary judgment: *Burnett v. Brock*, C.A. No. C85-1897A (N.D. Ga.) (a challenge to OFCCP's finding of no jurisdiction under section 503 over complainant's employer); *Williams v. Conrail*, C.A. No. IP83-1888C (S.D. Ind.) (a challenge to OFCCP's finding of no violation); *Moski v. Angrisani*, C.A. No. 3:85-692-84 (D. S.C.) (alleging nonenforcement of the Comprehensive Employment and Training Act (CETA), title VI, and section 504); *Thompson v. U.S. Department of Labor*, C.A. 85-3875 (E.D. Pa.) (a challenge to OFCCP's delay in processing a case in which it preliminarily found a violation); *Solomon v.*

OFCCP, C.A. No. 3-85-1445-H (N.D. Tex) (a challenge to OFCCP's delay in determining whether there is section 503 jurisdiction over plaintiff's employer). Trial began on September 9, 1985, in *McKee v. SCM*, C.A. No. B-79-162(1) (D. Md.), where an individual complainant challenged the Department's decision not to provide him with data which he had requested under the Freedom of Information Act. In *Davis v. Mobile Consortium*, C.A. No. 79-0167-C (S.D. Ala.), trial activity continued. In the *Davis* defensive case, we opposed numerous pretrial motions, filed an answer to a lengthy amended complaint, and submitted a proposed pretrial order. This class action challenged, *inter alia*, the Department's handling of plaintiff's CETA complaint alleging race and sex discrimination and a failure by the Department to properly monitor the CETA program run by the Mobile Consortium. Plaintiff and members of her class sought monetary damages from the Department and from departmental officials individually and prospective relief under the JTPA program. The case has been bifurcated into plaintiff's procedural due process claim and the substantive discrimination claims.

The division's U.S. court of appeals litigation during the fiscal year stemmed largely from CETA. The division represented the Secretary in approximately a dozen cases in which appellate review of his final decisions was sought and was successful in all but one case.

Among the more significant cases were *City of Chicago v. U.S. Department of Labor*, No. 84-2047 (7th Cir. Aug. 15, 1985), in which the court upheld the ALJ's authority to require complete discovery from recipients who contest facts found during investigations by the Office of Civil Rights, and *Davis v. Tennessee Department of Employment Security*, No. 85-3541 (6th Cir. Aug. 8, 1985), where the court upheld findings that an employee of the respondent State agency had not been retaliated against for filing discrimination charges.

The division also handled a number of appeals relating to actions taken by OFCCP under Executive Order 11246 and the Rehabilitation Act. In *Moon v. Donovan*, No. 83-8530 (11th Cir. Nov. 26, 1984) and *D'Amato v. Wisconsin Gas Co.*, No. 83-3235 (7th Cir. Jan. 11, 1985), the division successfully defended against challenges to the broad degree of discretion vested in OFCCP and the Solicitor to determine whether to commence litigation in handicap discrimination cases. In *Philip Morris, Inc. v. Brock*, No. 84-1420 (4th Cir. Feb. 13, 1985), the division was successful in establishing OFCCP's right to investigate handicap discrimination complaints, even in situations: (a) where the contractor challenges

the timeliness of the charge, and (b) where it challenges the propriety of the director's extension of the filing period for good cause.

During the fiscal year, the staff was instrumental in the Department's publication of two important regulatory documents. The division worked closely with the Department's Office of Civil Rights (OCR) in the preparation of a proposed rule to implement the 1978 amendments to section 504 of the 1973 Rehabilitation Act, covering nondiscrimination on the basis of handicap in programs and activities conducted by the Department. The proposed rule was published in the *Federal Register* on July 2, 1985 (50 F.R. 27298). The division also worked closely with the Office of the Assistant Secretary for Veterans' Employment and Training and OFCCP in the preparation of an advance notice of proposed rulemaking (ANPRM) concerning reporting by Government contractors of their employment of veterans, as is required by 38 U.S.C. section 2012(d). The ANPRM was published in the *Federal Register* on August 19, 1985 (50 F.R. 33361).

In addition, the division assisted OCR in its efforts to have the States develop acceptable "Methods of Administration" (MOA) to ensure equal opportunity in programs funded under JTPA. During the year, more than 60 of OCR's proposed determinations on the sufficiency of State MOA's were reviewed, and legal opinions and advice on a number of legal issues pertaining to them were prepared.

The division also assisted in the preparation of a substantial number of opinions and interpretative materials for OFCCP, particularly in the area of coverage. Among our more important opinions were whether, for coverage purposes, Federal reserve banks are instrumentalities of the Federal Government or are Government contractors and whether OFCCP could claim coverage of a large computer services company (with no direct Government contracts) on the basis of its relationship with several subsidiary companies (which have contracts).

Employee Benefits

During fiscal year 1985, the Division of Employee Benefits provided legal advice and assistance to the Employment Standards Administration (ESA) in connection with the administration of the Longshore and Harbor Workers' Compensation Act (Longshore Act), the Black Lung Benefits Act (BLBA), the Federal Employees' Compensation Act (FECA), and various statutes having employee protection provisions such as the Energy Reorganization Act of 1974. Of particular significance was the assistance rendered in con-

nection with the drafting and promulgation of interim final regulations implementing the 1984 amendments to the Longshore Act. These rules were promulgated and made effective on December 27, 1984, as required by Public Law 98-426 (50 FR 384, Jan. 3, 1985).

The division also participated in the Task Force established by the Secretary of Labor to develop proposals for eliminating the significant backlog of Black Lung Benefits Act cases pending before the Office of Administrative Law Judges and the Benefits Review Board. The Secretary transmitted his recommendations to the Congress and asked for support in obtaining the resources necessary to finance the Department's plan to reduce the backlog.

In last year's report it was noted that the changes made by the Longshore and Harbor Workers' Compensation Act Amendments of 1984 (P.L. 98-426, 98 Stat. 1639) would have a direct effect upon the resolution of issues that were pending in the adjudicatory process as of September 28, 1984. The amendment to section 12 of the Longshore Act, extending from 30 days to 1 year the time within which an injured employee must notify the employer, resulted in the Ninth Circuit's vacating a previous decision denying a claim because of the employee's failure to notify the employer of the injury in a timely manner. *Osmundsen v. Todd Pacific Shipyard*, 755 F.2d 730 (1985). The court rejected the argument that the employer's due process rights would be violated if the amendments applied to pending cases. A similar ruling was issued by the Fifth Circuit in *Louviere v. Marathon Oil Company*, 755 F.2d 428 (1985).

During the year several other important decisions were issued under the Longshore Act. The Fifth Circuit, on remand from the Supreme Court (105 S.Ct. 1421), ruled that an employee injured on a fixed rig in Louisiana waters was not entitled to benefits under the Outer Continental Shelf Lands Act. *Herb's Welding v. Gray*, 766 F.2d 898 (1985). At issue in *American Mut. Liability Ins., Co. v. Smith*, 766 F.2d 1513 (5th Cir. 1985), was whether compensation to an employee's surviving children must be increased immediately upon the remarriage of the spouse. The employer contended that such increase was payable only after 2 years, since on remarriage the surviving spouse received a lump sum equal to 2 years' compensation. The court of appeals, agreeing with the administrative interpretation of the Office of Workers' Compensation Programs, held "that the plain language of 33 U.S.C. sec. 909 and its legislative history demonstrate that the increase of the children's benefits is not to be delayed for a 2-year period following the remarriage of the surviving spouse." 766 F.2d at 1519.

The division also received several important decisions involving an employer's entitlement to a limitation of its liability under the second-injury provisions of section 8(f) of the Longshore Act. The U.S. Court of Appeals for the District of Columbia Circuit, in *Director, Office of Workers' Compensation v. Belcher Erectors*, 770 F.2d 1220 (1985), held that the Benefits Review Board erred when it reversed an administrative law judge (ALJ) decision denying section 8(f) relief. The court held that the ALJ's finding that the employee had no preexisting permanent partial disability, one of the essential requirements for granting relief under section 8(f), was supported by substantial evidence and that, therefore, the Board erred in substituting its judgment for that of the trier of fact. In another case, the Eleventh Circuit held that an employer could not take advantage of the provisions of section 8(f) to limit its liability, unless the issue was raised at the initial hearing. *Verderane v. Jacksonville Shipyards, Inc.*, 772 F.2d 775 (11th Cir. 1985). Accord: *The Home Indemnity Company v. DiMattina*, No. 84-4170 (2d Cir. April 19, 1985).

The Ninth Circuit, agreeing with *Tidelands Marine Service v. Patterson*, 719 F.2d 126 (1983), held that the Benefits Review Board did not have authority to review default orders filed pursuant to section 18(a) of the Longshore Act. *Providence Washington Ins. v. Director, Office of Workers' Compensation Programs (OWCP)*, 765 F.2d 1381 (1985) (the proper forum for challenging such order is the U.S. district court). In two cases in which the injured employee sought to enforce default orders, the courts upheld the OWCP deputy commissioners' orders and rejected the employers' argument that such orders may only be entered following a formal hearing before an ALJ. *Lauzon v. Strachan Shipping Co.*, 602 F. Supp. 661 (S.D. Texas 1985); *Geary v. Jeffboat, Inc.* 620F. Supp. 41 (S.C. Ind. 1985). The courts concluded that, unless there is a genuine dispute of fact or law regarding the default, a formal hearing was not required.

Section 44(c) (2) of the Longshore Act, as made applicable to employers in the District of Columbia by the District of Columbia Workmen's Compensation Act of 1928, requires every self-insured employer and carrier to contribute to a "special fund," which provides supplemental compensation to claimants in specific instances. In a significant decision issued July 19, 1985, the U.S. District Court for the District of Columbia upheld the Department's position that the Washington Metropolitan Area Transit Authority must contribute to the special fund. *Donovan v. Washington Metro. Area Transit Auth.*, 614 F. Supp. 1419, appeal pending,

No. 85-5969 (D.C. Cir. 1985). The court rejected the argument that the section 44(c) (2) contribution was a tax and that, therefore, WMATA was exempt from its provisions.

Continuing a trend which began in 1980, the most active litigation before the courts of appeals during the year involved the BLBA program. Approximately 160 new appeals were docketed. The courts issued several dozen decisions, including 30 published opinions. Several important precedents were established.

In a series of opinions, the Sixth Circuit established standards for rebuttal of the presumption of total disability caused by black lung disease arising out of coal mine employment which is afforded to an eligible miner or survivor by the Secretary's regulation at 20 CFR 727.203. These decisions are particularly significant, because approximately 25 percent of all black lung claims are filed within the territorial jurisdiction of the Sixth Circuit.

For example, in *Ramey v. Kentland Elkhorn Coal Corp.*, 755 F.2d 485 (1985), the court addressed the regulation which allows rebuttal of the presumption of total disability if "in light of all relevant evidence it is established that the individual is able to do his usual coal mine work or comparable and gainful work." The court, agreeing with several other circuits, held that proof of ability to do usual coal mine work is solely a matter of medical evidence and that an employer is not required to also demonstrate that mine work or comparable work, which the miner is physically capable of doing, is actually available to him in the immediate area of his home. In *Kolesar v. Y & O Coal Co.*, 760 F.2d 728 (1985), the court confirmed the view expressed in *Ramey* that medical evidence alone is sufficient to rebut the presumption, and it specifically held that nothing in the statute or regulations requires consideration of age as a factor in determining whether the presumption is rebutted. In *Moseley v. Peabody Coal Co.*, 769 F.2d 357 (1985), the court endorsed the principle that all relevant medical opinions must be weighed in determining whether the presumption is to be invoked by the method provided at 20 CFR 727.203(a) (4) and rejected the contention that the medical reports used to rebut the presumption must be phrased in terms of a "reasonable degree of medical certainty" (as opposed to "reasoned medical judgment"). The court also held that an ALJ's decision to accord medical reports little weight due to their inadequate testing and reasoning is a permissible determination of credibility and affirmed the ALJ's conclusions that pneumoconiosis did not contribute to the miner's disability, that his disability was caused entirely by heart disease and that, therefore, the presumption was rebutted under 20 CFR 727.203(b) (3). Finally, where an employer attempts rebuttal of

the presumption under 20 CFR 727.203(b) (2) by proof of the miners' ability to do "comparable and gainful work," the Sixth Circuit held that the proper standard to be applied by the ALJ is whether, in light of the miner's impairment, age, education, work experience, and skills, he is unable to engage in any comparable and gainful work that is available to him in the immediate area of his residence; however, the employer does not bear the "difficult if not impossible burden" of showing that there is an actual job vacancy for which the miner could successfully compete. *Shamrock Coal Co. v. Lee*, 751 F.2d 187 (1985).

The Eighth Circuit ruled in *Phillips v. Director, Office of Workers' Compensation Programs*, 768 F.2d 982 (1985), that where objective clinical evidence shows an improvement in pulmonary function capacity, rather than the progressive impairment expected from a person suffering from pneumoconiosis, any medical report which merely states in conclusory terms that the claimant is suffering from pneumoconiosis and which fails to explain how that conclusion is reached, particularly in light of contrary clinical evidence, is not based upon "reasoned medical judgment." Such a conclusory medical report is insufficient to invoke the interim presumption under 20 CFR 727.203(a) (4). Similarly, in the context of attempted rebuttal of the presumption of disability, the Fourth Circuit held that physician's conclusory statements that the miner was not impaired for work have little probative value in arriving at the specific determinations mandated by the statute. Accordingly, medical reports which lack objective test results and findings noted on physical examination are insufficient to satisfy the specific regulatory requirement for rebuttal that the evidence demonstrate that the miner be able to do his usual coal mine work or comparable and gainful work. *Wilson v. Benefits Review Board and Valley Comp. Coal Co.*, 748 F.2d 198 (1984).

Fiscal year 1985 saw the development of Benefits Review Board case law on the BLBA transfer provisions. These provisions, added to the statute by Congress in 1981, transfer liability for certain pending and previously denied black lung claims from responsible coal mine operators to the Black Lung Disability Trust Fund. In one of the most significant decisions to date, the Board vacated an ALJ's dismissal of a responsible operator and held that a case did not qualify for transfer absent a specific claimant request for Reform Act review of a previously denied Part B application. The Board rejected the employer's implied election theory, i.e., that, by choosing to proceed with a pending Part C claim, the claimant in fact "elected" Reform Act review of that claim rather than choosing to proceed with his old Part B application. *Chadwick v. Island Creek Coal Co.*, 7 BLR 1-883 (1985).

The Board also upheld the Director's right to submit new evidence to the Board on the transfer issue when the case was already pending before the Board at the time the 1981 amendments were passed and when the evidence had not previously been included in the record because it was not then relevant to the case. The Board noted that the regulations specifically anticipated either the reopening of a case's hearing record or the case's being remanded for the development of additional evidence as to its procedural history, 20 CFR 725.497(b). The Board specifically stated that the director was not estopped in this case from submitting additional evidence because of any wrongful withholding of the evidence at prior stages of the adjudication. The Board also held, however, that its limited scope of review prevented its *de novo* consideration of the evidence and, therefore, remanded the case to the deputy commissioner for his consideration of the evidence and its impact on the transferability of the claim. *Stallings v. Mulga Coal Co.*, 7 BLR 1-807 (1985) (Order).

Finally, the Board held, in another case, that the director satisfied his duty to present all relevant facts regarding transferability by issuing a Notice of Review which indicated, based on a SSA computer printout, that the claimant had not returned his election card. Once the director had performed this duty, it was reasonable to assume that all relevant facts had been properly examined and that the employer should have clear evidence to the contrary in order to overcome a finding of no transfer. *Krecota v. Rochester & Pittsburgh Coal Co.*, ____ BLR ____, BRB No. 83-1288 BLA (Aug. 8, 1985).

Two circuit courts upheld the Department's position that, in cases where claims for benefits had been denied as of the effective date of the 1981 amendments to the Act and therefore the named employers were relieved of potential liability for payment of benefits and dismissed as parties to the litigation and the director, OWCP, as the representative of the Black Lung Disability Trust Fund was substituted as the respondent potentially liable for payment, claimants must establish that the denials were incorrect and that they were entitled to benefits; their claims cannot be remanded for payment from the Trust Fund absent the director's agreement that the decisions denying benefits were erroneous. *Pavesi v. Director, OWCP*, 758 F.2d 956 (3d Cir. 1985); *Shortt v. Director, OWCP*, 766 F.2d 172 (4th Cir. 1985).

The Department's position that a claimant who is awarded benefits is not entitled to prejudgment interest on the award was upheld by two circuit courts. *Beihleheim Mine Corporation v. Director, OWCP*, (Simila), No. 84-3722 (3d Cir. July 1, 1985);

Peabody Coal Co. v. Blankenship, 773 F.2d 173 (7th Cir. Sept. 19, 1985). Rather, interest on black lung benefits awards does not begin to accrue until 30 days after the first decision determining liability for payment is made and the employer refuses to pay the benefits, even though an award of "back benefits" to a date as early as January 1, 1974, is made.

In a case of first impression, the Third Circuit approved the Department's position that the extraction of coal as a by-product of clay mining does not bring the activity within the Act's definition of coal mining, if the coal is not used for a commercial purpose. Also, persons engaged in extracting coal in the process of mining clay, their principal job, are not "miners" within the meaning of the Act and are not eligible to claim black lung benefits. *Wisor v. Director, OWCP*, 748 F.2d 176 (1984).

Employment and Training Legal Services

In fiscal 1985, the division's litigation activities were again centered in three major areas: the labor certification program, cost disallowance cases under the Comprehensive Employment and Training Act (CETA), and grantee selection cases under the Job Training Partnership Act (JTPA).

Temporary labor certifications in agriculture continued to be the most contentious matters handled by the division. Three United States courts of appeals affirmed the procedures used by the Department to set the adverse effect wage rate (AEWR), the minimum wage which must be paid by employers using temporary alien workers. *Shoreham Coop. v. Donovan*, 764 F.2d 135 (2d Cir. 1985); *Production Farm Management v. Brock*, No. 84-2734 (9th Cir. Aug. 8, 1985); *Florida Fruit and Vegetable Association v. Brock*, 771 F.2d 1455 (11th Circuit 1985). A related issue was still pending in the Fourth Circuit at the end of the year, *VAGA v. Donovan* 774 F.2d 89 (1985).

On July 9, 1985, the D.C. Circuit in *NAACP, Jefferson County v. Donovan*, 765 F. 2d 1178, overturned the Department's regulation concerning the adjustment of piece-rates paid by certain agricultural employers. The Department's efforts to implement the *NAACP* decision produced a conflicting court order in a consolidated action brought by the employers in the Northern District of West Virginia in *Mount Level Orchards v. Brock and Tri-County Growers v. Brock*, No. 85-0037-M; the conflicting orders have yet to be reconciled by the appellate court.

We received a significant decision from the Fourth Circuit in *VAGA v. U.S. Department of Labor*, 756 F.2d 1025 (1985), affirm-

ing departmental regulations requiring agricultural employers using aliens to hire all domestic workers who appear during the first half of the harvest season.

In the ETA audit area, major litigation continued to focus on the question of whether grant officer final determinations must be issued within 120 days of receipt of the audit report. On December 27, 1984, the Ninth Circuit agreed with an earlier Third Circuit ruling that the 120-day provision was jurisdictional. *City of Edmonds v. U.S. Department of Labor*, 749 F.2d 1419. Subsequently, the Second Circuit in *St. Regis Mohawk v. Brock*, 769 F. 2d 37 (1985), and the Seventh Circuit in *Milwaukee County v. Brock*, No. 771 F. 2d 983 (1985) issued contrary rulings. On September 4, the Solicitor General requested the Supreme Court to review another Ninth Circuit decision which followed *City of Edmonds*, *Pierce County v. Donovan*, No. 85-835.

The division worked closely with the Employment and Training Administration, providing legal assistance for program operations, including rulemaking actions. Legal advice was given on appeals of service delivery area designations under the JTPA and on grant awards for the JTPA training and employment programs for migrant and seasonal farmworkers, Indians and other Native Americans, and dislocated workers. A proposed rule was published to update and revise the Senior Community Service Employment regulations. Rulemaking actions for alien labor certification programs were taken, primarily regarding wage rates for covered workers. The division participated actively in staff-level work for national farm labor coordinated enforcement activities.

The division also provided legal assistance to the Assistant Secretary for Veterans' Employment and Training in implementation of JTPA programs for veterans, the Disabled Veterans' Outreach Program, and certain of the Department's other veterans' programs.

With the assistance of this division, the Office of the Assistant Secretary for Administration and Management published the final Department of Labor Acquisition Regulation (DOLAR) and interim regulations for implementation of the Single Audit Act. The division also participated on the Procurement Review Board.

In the area of unemployment compensation, the division prepared the Administration's bill to cover railroad workers under State unemployment compensation laws. Additionally, the division assisted the Employment and Training Administration (ETA) in preparing the proposed rules, published March 14, 1985, on Income and Eligibility Verification Procedures for Food Stamps, Aid to Families with Dependent Children, State Administered

Adult Assistance, Medicaid and Unemployment Compensation Programs. The division also assisted ETA in proceeding with audit resolution and debt collection resulting from the Office of Inspector General's audits of the administration of Federal and Federal/State unemployment compensation programs by State employment security agencies in 45 States.

Fair Labor Standards

During fiscal 1985, the Fair Labor Standards Division provided legal assistance in defense of the amended Service Contract Act (SCA) and Davis-Bacon regulations and successfully engaged in major litigation at both the trial and appellate court levels.

In *AFL-CIO v. Donovan*, 767 F.2d 939 (1985), the D.C. Circuit ruled in the Department's favor on seven of eight issues presented in the case in which nine unions challenged the Department's regulations under the SCA. Four of the challenged rules concern the Department's interpretation of the basic coverage provisions of the Act. The court ruled that the Act applies only to contracts which as a whole are "principally" for services and not to individual requirements for services in contracts principally for supply, construction, or some other purpose. The court also upheld the Department's interpretation of the Act with regard to the locality upon which wage determinations would be based where the place of contract performance is unknown, agreeing that separate wage determinations should be issued for each possible place of performance, rather than a single nationwide determination. Similarly, the court agreed that the general requirement that a new contractor pay the wages collectively bargained by the previous contractor does not apply, where a new contractor performs the contract at a different locality than the previous contractor. Finally, the court upheld the Department's exemption for certain contracts for the service of automated data processing and similar equipment. The court did not reach the merits of the remaining regulatory provision, which concerned the application of the Act to contracts performed in part within and in part outside of the United States, because, it held, the Department had failed to give sufficient notice that the provision might be changed.

The Department received an order in the Davis-Bacon regulations case from the U.S. District Court for the District of Columbia, *Building and Construction Trades Dept., AFL-CIO v. Donovan*, 102 CCH Labor Cases ¶34,648 (1984), modifying the injunction it had issued in January 1983 in order to implement the court of appeals' July decision, 712 F.2d 611 (1983), *cert. denied*,

104 S.Ct. 975 (Jan. 16, 1984). The district court lifted its prior injunction against implementation of the regulation excluding wage data from Federal projects in making certain wage determinations under the Act and of the regulation excluding data from metropolitan areas in determining rural wage rates. Accordingly, these regulations were implemented effective January 31, 1985, 50 F.R. 4506. The court also lifted the injunction on the regulation defining the duties of helpers but continued the injunction against certain other regulatory provisions. The court enjoined the provisions authorizing issuance of wage determinations when the helper classification is "identifiable" in the area, which the court of appeals had invalidated, as well as the provisions regarding conformance procedures and the allowable ratio of helpers to journeymen, upon which the appellate court had declined to rule.

The division also provided legal assistance in connection with the promulgation of new regulations pertaining to homework in the knitted outerwear industry. Under the final rule issued on November 5, 1984, employers of homeworkers in this industry are required to first obtain certificates from the Wage and Hour Division. This rule amended the prior regulation under which homework in this industry was prohibited except for persons unable to adjust to factory work by reason of physical or mental disability or required to remain home to care for an invalid.

In addition to its work on regulatory issues, the division was involved in a number of significant cases in the various courts.

In *American Waste Removal v. Donovan*, 748 F.2d 1406 (1984), the Tenth Circuit held that, under the SCA, sums that have not been paid to unnamed and unlocated employees because of the Government's inability to identify or locate the employees should be paid into the Treasury as miscellaneous receipts; the court reasoned that to permit the employer to retain such sums would reduce its incentive to comply with the Act.

In *Unity Bank & Trust Co. v. U.S.*, 756 F.2d 870 (Fed. Cir. 1985), which involved the issue of an assignee's right to recover accrued contract payments which had been withheld from final payment to the contractor assignor because of Davis-Bacon wage violations, the Federal Circuit affirmed the Claims Court's decision for the Government. The court of appeals held: (1) the assignee was not entitled to priority over the claim of the Government under the Assignment of Claims Act, (2) the United States was not estopped from withholding the contract funds because the Government did not have actual or constructive knowledge of the wage under-payments until the investigation, and (3) the United States had no duty to monitor the contractor's compliance with the Act

in order to prevent violations for the protection of the assignee. The court further stated that the Davis-Bacon Act was enacted for the protection of employees, not contractors or assignees.

The Department also received a favorable decision in *Glenn Electric Co. v. Donovan*, 755 F.2d 1028 (1985), in which the Third Circuit affirmed a district court decision that the statute of limitations provisions of the Portal-to-Portal Act do not apply to actions arising under the Davis-Bacon Related Acts. The circuit expressly relied on *Unexcelled Chemical Corp. v. U.S.*, 345 U.S. 59 (1953), and ruled that the limitations provisions of the Portal Act apply only in judicial rather than administrative proceedings.

In the Fair Labor Standards Act (FLSA) area, the Sixth Circuit denied the Department's petition for rehearing in *Donovan v. Brandel*, 760 F.2d 126 (1985), and thus let stand its 1984 decision holding that the migrant farm worker families involved in that litigation were independent contractors, rather than employees of the farm owner. In its order denying rehearing, the court expressly reserved the question of FLSA coverage of the migrant workers' children under 12 years of age. But, in *Donovan v. Dial-America Marketing, Inc.*, 757 F.2d 1376 (1985), the Third Circuit affirmed the district court's denial of fees under the Equal Access to Justice Act and reversed the district court's ruling on the independent contractor issue. In so doing, the appellate court embraced the traditional economic realities test to determine "employee" status and held that homeworkers who researched magazine subscribers' telephone numbers were employees, subject to the protection of the FLSA.

On the "enterprise" coverage issue, the Department received an unfavorable decision from the Sixth Circuit in *Marshall v. Shan-An-Dan, Inc.*, 747 F.2d 1084 (1984), in which the court reversed the district court's decision. The appellate court held that a franchisee and its franchisor did not constitute an enterprise within the meaning of section 3(r) of the FLSA, noting that the legislative history indicates that the FLSA was not intended to apply to an "ordinary" franchise arrangement. However, in *Donovan v. Grim Hotel Co.*, 747 F.2d 966 (1984), the Fifth Circuit held that the defendant hotel corporations constituted one "enterprise" within the meaning of section 3(r) of the FLSA; the court noted that separate incorporation may not be used as a device to avoid the requirements of the FLSA. Finally, the court rejected the defendant's contention that *res judicata* barred the present suit because of the Secretary's successful prior FLSA litigation against the same individual defendant and other hotel corporations for similar violations in another State.

The Department received a favorable decision from the Tenth Circuit in *Donovan v. Burgett Greenhouses*, 759 F.2d 1483 (1985), an employer's appeal from contempt sanctions imposed for its failure to comply with an FLSA injunction. The Tenth Circuit thereby joined the Fifth and Ninth Circuits in ruling that the Portal-to-Portal Act does not apply in a FLSA contempt proceeding.

In *EEOC v. County of Erie and the Erie County Medical Center*, 751 F.2d 79 (1984) (an Equal Pay Act case filed in 1971 in which the division represented the Equal Employment Opportunity Commission [EEOC] and which we continued to litigate after transfer of responsibility for the Equal Pay Act to the EEOC), the Second Circuit affirmed the district court's holding that prejudgment interest on back wages under FLSA section 17 should be awarded at the adjusted prime rate, established by the Secretary of the Treasury pursuant to 26 U.S.C. 6621. The court stated that it was "well within the discretion of the district court to choose the adjusted prime rate" and rejected the defendants' argument that interest should not be awarded or should be awarded at a lesser rate, where the wrongdoing employer is a public entity.

During the past year, the division also continued its defense of the Department in *NAACP v. Brock*, Civ. No. 72-2010 (D.D.C. 1972). In the *NAACP* action, plaintiffs sought to extend a 1980 consent decree which, by its terms, expired December 31, 1983. This litigation has been pending for more than 10 years and involves a broad challenge to the adequacy of the Department's enforcement of various statutes intended to protect migrant farm workers. Affected program agencies include the Employment Standards Administration, the Employment and Training Administration, and the Occupational Safety and Health Administration. Plaintiffs contended that the provisions of the consent decree were not properly observed. Settlement negotiations are expected to lead to a satisfactory resolution of the matter in the near future.

On February 19, 1985, in *Garcia v. San Antonio Metropolitan Transit Authority*, 105 S. Ct. 1005, the Supreme Court overruled its prior decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976) and held that the minimum wage and overtime requirements of the Fair Labor Standards Act could constitutionally be applied to State and local governments. Subsequent to that decision, the division has been involved in the defense of four lawsuits against the Department which attempt to prevent, delay, or modify the application of the FLSA to State and local governments.

In *District of Columbia v. Brock*, Civ. No. 85-2903 (D.D.C. filed September 18, 1985), and *City of Los Angeles v. Brock*, No. CV85-5341-MRP(JRX) (C.D. Calif. filed August 13, 1985), two

local governments sought to compel the Department to "phase in" the application of overtime standards for police and fire protection employees subject to section 7(k) of the Act, comparable to the statutory phase-in provided in the 1974 amendments, and to require promulgation of those standards under the notice and comment requirements of the Administrative Procedure Act. In *City of Baltimore v. Brock*, Civ. No. 85-3115 (D.D.C. filed September 27, 1985), plaintiffs questioned the constitutionality of the application of the FLSA to health and safety employees of State and local governments and sought either to block application of the Act to these employees or, alternatively, to seek the relief sought by the City of Los Angeles and the District of Columbia in their suits. An in *Leon County Police Benevolent Assoc., Inc. v. City of Tallahassee, Florida*, No. 85-7193-WS (N.D. Fla., filed August 15, 1985), the Association and an employee sued the City of Tallahassee and the Department asking that the provisions of the collective bargaining agreement between the Association and the City relating to compensatory time off be declared not precluded by the FLSA. The division expects the defense of these suits to continue into next fiscal year.

It should be noted, however, that there are currently pending in Congress several bills which would deal with many of the issues raised by the *Garcia* case. The division has been called upon to provide legal advice and assistance to the Wage and Hour Division on regulations now needed because of the Supreme Court's decision to apply the FLSA to State and local governments as well as in answering numerous public inquiries as to the application of the FLSA under these new circumstances.

In *Soler v. G & U Inc.*, 615 F. Supp. 736 (S.D. N.Y. 1985), a case handled by the New York regional office, the U.S. District Court for the Southern District of New York held that, based on the facts of record in the case, certain housing provided to migrant farm laborers was primarily for the benefit of the growers and, therefore, could not be used as the basis for credit against the farmers' minimum wage payment obligation under the FLSA.

The Department was successful in establishing that children 14 to 18 years of age selling candy and cookies door-to-door were employed in violation of the child labor provisions of the FLSA. In *Brock v. Global Home Products, Inc.*, and *Thomas v. Brock*, (W.D. N.C. Aug. 13, 1985), cases which were litigated by the Atlanta regional office, the court found that Charles Thomas and Global Home Inc., among others, were employers of the underaged minors who were employed in violation of the Act and enjoined them from future violations.

On September 30, 1985, the U.S. District Court for the District of Oregon in *Bresgal v. Brock*, Civ. No. 84-6315-E, concluded in a declaratory judgment action that the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1802 *et seq.*, covers tree planters, tree thinners, and other forestry workers. Plaintiffs' complaint alleged that in 1974 Congress expanded the definition of "agricultural employment" in the Farm Labor Contractor Registration Act (FLCRA) to bring forestry workers within its protection and that MSPA, enacted in 1983 to replace FLCRA, adopted without change the latter's definition of that term. The Secretary argued that the definition of agricultural employment in FLCRA and MSPA is limited to the definition of that term under the FLSA and the Internal Revenue Code. Under both those statutes, "agriculture" has always excluded forestry or lumbering operations.

Labor-Management Laws

In fiscal year 1985, the division filed complaints in suits arising under the Labor-Management Reporting and Disclosure Act (LMRDA) and also defended the Secretary's right not to sue under the Act. The division participated extensively in the negotiation and supervision of remedial elections of union officers as well as litigated important issues under the Vietnam Era Veterans' Readjustment Assistance Act, the Redwood National Park Expansion Act, the Urban Mass Transportation Act, the Airline Deregulation Act, and the Equal Access to Justice Act.

A major portion of the division's litigation during the year has been in connection with union officer elections under title IV of the LMRDA. In one such landmark case, the court, distinguishing all prior adverse decisions with similar facts, found that, when a union with a geographically dispersed membership provides only one polling place and makes no provision for absentee balloting, it is, in effect, denying distant members an opportunity to vote. *Donovan v. Local 41, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 598 F. Supp. 710 (W.D. MO. 1984). The court established a standard for evaluating when distance from the polls results in a denial of the right to vote. Such factors as the nature of the work of union members, the voting methods available, the lack of employer accommodation, the time of year of the election, and other surrounding circumstances were all considered by the court before the violation was found.

In another favorable decision *Donovan v. Air Transport District Lodge No. 146, International Association of Machinists*

and *Aerospace Workers, AFL-CIO*, 754 F.2d 621 (5th Cir. 1985), the court held that even though a union member complains of a specific violation with respect to only one office, the Department may investigate and sue to overturn the election for all other offices affected by the same violation. In this district officer election, nominations had been conducted in each of the district's locals, whose members were employed by various airlines. The complainant protested that his local had deprived him of an opportunity to nominate the Executive Board Member for his airline. During investigation of the complaint, it was discovered that other locals employed the same or similar methods of nomination for Executive Board Members from certain other airlines and that these procedures violated the LMRDA. The Department sued to set aside the election for all of these offices, as well as the office of district Secretary-Treasurer, whose nomination was conducted in the same manner. The complainant could not have known about the violations in these other locals and could not have protested them internally, as is required before a complaint can be filed with the Department. The court, applying the Supreme Court's test established in *Hodgson v. Local Union 6799, United Steelworkers of America, AFL-CIO*, 403 U.S. 333 (1971), held that in such a situation a suit to set aside the election for all officers affected by the same nomination violations may be maintained.

More recently, in a case of first impression, the court agreed with the Department that a union-financed survey, in which members were asked to state their opinions regarding incumbent candidates and important union issues, constituted a prohibited use of union moneys in promotion of a candidacy. *Brock v. Local 996, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America*, ____ F. Supp. ____, No. 79-0309 (D. Hawaii Sept 24, 1985). The court found, additionally, that the manner in which the incumbents used the survey results was violative of the LMRDA. Through the survey, they had discovered that they were favored at that particular time and had advanced the election date accordingly. In ruling from the bench, the judge ordered that the election be set aside and that a supervised election be held within 120 days.

During this fiscal year, the division also handled or assisted in several significant appellate court cases regarding the reporting requirements of title II of the LMRDA. In *Master Printers of America v. Donovan*, 751 F.2d 700 (4th Cir. 1984) and *Humphreys, Hutcheson and Moseley v. Donovan*, 755 F. 2d 1211 (6th Cir. 1985), discussed in the Special Appellate and Supreme Court Litigation section of this report, the courts joined two other cir-

culits in upholding the Department's enforcement of the statute. However, a conflict among the circuits was created by the Eighth Circuit's decision in *Brock v. The Rose Law Firm*, 768 F.2d 964 (1985). In that case, the court held that the legislative history of the LMRDA did not support the Department's extensive reporting requirement under section 203(b) of the Act. The court held that the Department may only require reports from the specific employer for whom persuader activity was performed.

Litigation under other portions of the LMRDA also resulted in important decisions. In the first case in which there was a constitutional challenge to the Comprehensive Crime Control Act's labor racketeering amendment of section 504, the court found that the new provision was constitutional and was not a bill of attainder, as had been alleged. *Local 186, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America v. Donovan*, ___ F. Supp. ___, No. CV-85-1763 (C.D. Cal. July 8, 1985). On another issue, the Secretary's subpoena enforcement powers under section 601 of the Act were upheld. *Donovan v. Spadea*, 757 F.2d 74 (3d Cir. 1985); *Donovan v. District 1199 New York Health and Hospital Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO*, 760 F.2d 440 (2d Cir. 1985). The subpoena in *District 1199* had been issued during the course of an investigation of a union member's protest of the union's 1983 officer election. After District 1199 was ordered by the court to produce the records, several violations regarding the conduct of the election were found, and the union was so notified. The division participated in the negotiations that resulted in a voluntary compliance agreement in which District 1199 agreed to conduct a new election under the supervision of the Department.

The division was also involved with cases arising under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRA). In *Akers v. Arnett*, 748 F.2d 283 (1984), the Fifth Circuit held that a veteran was entitled to credit towards his pension for the time he worked before he entered the service, rejecting the employer's contention that preservice employment was "temporary." The court also awarded the veteran prejudgment interest. In *Chesna v. International Fueling Co., Inc.*, 753 F.2d 1067 (1984), the First Circuit affirmed the decision of the district court which held that the reservist's termination from employment was causally connected to his military reserve obligations and was not a firing for cause, as alleged by the employer. Chesna was also awarded lost wages. Finally, in an unfavorable decision under VEVRA, the Sixth Circuit reversed the decision of the lower court and held that an employer's annual contribution to the company

profit-sharing plan was not a prerequisite of seniority. *Raypole v. Chemi-Trol Chemical Co., Inc.*, 754 F.2d 169 (6th Cir. 1985). Therefore, the veteran was not entitled to these contributions during the time he had spent in military service.

A significant development occurred in the division's work under the Urban Mass Transportation Act (UMTA). In an adverse decision, the D.C. Circuit remanded *Amalgamated Transit Union v. Donovan*, ____ F.2d ____, No. 84-5159 (July 9, 1985) to the lower court with instructions to revoke the Department's certification of the employee protection provisions under section 13(c) of UMTA. The certification was invalidated because the court found that the arrangement which had been certified did not provide for the continuation of collective bargaining rights, which the court found was mandated by UMTA. However, a favorable decision was issued in another UMTA matter, *Greenfield and Montague Transportation v. Donovan*, 758 F.2d 22 (1st Cir. 1985). The court found that, when the Department acted as an arbitrator under terms of the Rural Transportation Assistance Agreement between plaintiffs and the Commonwealth of Massachusetts, the Department's participation as an arbitrator was not subject to judicial review, because it was acting under a contract rather than pursuant to Federal law.

In *Alaska Airlines v. Donovan*, 766 F.2d 1550 (1985), the D.C. Circuit reversed the lower court's invalidation of the employee protection provisions of the Airline Deregulation Act (ADA). Section 43 of the ADA, which contained these provisions, had also included a legislative veto provision which was determined by the Supreme Court to be unconstitutional in another case, decided after the ADA was enacted, *Immigration and Naturalization Services v. Chadha*, 462 U.S. 919 (1983). The D.C. Circuit concluded that the unconstitutional legislative veto provisions of Section 43 of the ADA were severable from the remainder of the statute and remanded the case for consideration of the other issues presented.

In the first defensive suit under the Redwood National Park Expansion Act, the division successfully defended the Secretary and other Department officials against charges of conspiring to deprive plaintiffs of their rights to benefits under the statute and of violating their due process rights. *Local 3-98, International Woodworkers of America, AFL CIO v. Brock*, ____ F. Supp. ____, No. C-84-2485-MHP (N.D. Cal. June 18, 1985). The remainder of the plaintiffs' claims were transferred to the Ninth Circuit as the only appropriate forum for review of the relevant administrative actions under the statute.

In the area of international labor affairs, the division prepared annual reports on several conventions of the International Labor Organization (ILO), most notably ILO Convention No. 100 on Equal Remuneration. Additionally, the division has been active in preparing the Executive Branch position letter on ILO Convention No. 147 dealing with the improvement of standards on merchant ships.

Legislation and Legal Counsel

In fiscal year 1985, the Division of Legislation and Legal Counsel continued to work closely with Department officials in drafting proposed bills and related background materials, presenting the Department's views on pending legislation, and giving technical assistance to congressional committees. The division also performed a wide variety of "house counsel" functions, provided administrative legal services under the Freedom of Information and Privacy Acts, provided representation in connection with the Department's internal labor relations and personnel matters, assisted in the preparation of *Federal Register* documents, and furnished legal services to the Office of the Inspector General and the Bureau of Labor Statistics.

The division continued to provide assistance to various officials of the Department relating to the drafting of the Administration's Youth Employment Opportunity Wage Legislation. This legislation was transmitted to the 99th Congress by the President on March 25, 1985. The bill would amend the Fair Labor Standards Act to permit employers to pay youths under 20 years of age, during the period from May 1 through September 30, a wage of not less than \$2.50 per hour or 75 percent of the otherwise applicable minimum wage, whichever is less. The bill would prohibit discharge, transfer, or demotion of any employee because of ineligibility for the youth wage and would provide penalties to enforce these provisions. This program would terminate on September 30, 1987. The Administration's bill was introduced as H.R. 1811 and S. 797 in the House and Senate, respectively. Hearings were held by the Senate Committee on Labor and Human Resources at which Secretary Brock testified on May 22, 1985.

The division also provided drafting services in relation to proposed legislation entitled the "Railroad Unemployment Compensation Amendments of 1985." Secretary Brock submitted this draft bill to the Congress on May 22, 1985.

In fiscal 1985, the division worked on the preparation and review of 45 statements to be delivered by Labor Department witnesses before congressional committees. Departmental officials

testified on such important legislative matters as immigration reform, youth employment, working hours for employees of Federal contractors, the status of State and local government employees under the FLSA, veterans' employment and training, and unemployment compensation. Departmental officials also provided oversight testimony with respect to the administration of numerous Labor Department programs.

In addition, more than 100 reports to the Office of Management and Budget and congressional committees were prepared by this division on a broad spectrum of legislative proposals of interest to the Department.

The division also performed a wide variety of nonlegislative "house counsel" functions. These functions included the furnishing of advice with respect to the Ethics in Government Act as well as the other conflict-of-interest laws, orders, and regulations. The division consulted with numerous departmental agencies, officials, and employees on financial disclosure requirements, the avoidance of potential conflicts of interest, and permissible post-employment activities.

The division also provided legal advice on diverse matters including appropriations laws, the Hatch Act, administrative law issues, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Equal Access to Justice Act.

On February 6, 1985, the *Federal Register* published, in final form, three subparts of the Department's Debt Collection Act regulations drafted by this division in cooperation with various Labor Department officials. The subparts involve: disclosure of information to credit reporting agencies; administrative offsets for the repayment of debts; and assessment of interest, penalties, and administrative costs.

The division provided representation in the Department's internal labor relations, equal employment opportunity, and disciplinary cases. This representation involved both administrative cases and cases before the federal courts. In addition, advice and guidance was provided to all departmental agencies and, in particular, to the Office of the Assistant Secretary for Administration and Management on personnel matters. Also of significance was litigation before the Merit Systems Protection Board involving the legality of the Department's performance appraisal systems.

During fiscal 1985, the division performed a full range of legal services associated with the Freedom of Information Act (FOIA) and the Privacy Act. A total of 186 administrative appeals decisions were issued under the FOIA and Privacy Act. In the relatively small number of cases litigated under both statutes, the Depart-

ment received favorable decisions in all but one of the matters. The division also processed approximately 500 subpoenas of Department officials arising out of private litigation in which the Department is not a party.

Finally, the division provided legal counsel to the Office of the Inspector General, relating to a wide variety of civil and criminal matters. These matters included grantee audits, labor racketeering investigations, civil fraud litigation, subpoenas of OIG agents, and a diversity of house counsel functions.

Mine Safety and Health

Rulemaking and trial and appellate litigation on behalf of the Mine Safety and Health Administration (MSHA) accounted for the bulk of the division's work in fiscal 1985. As part of MSHA's comprehensive review of existing safety standards for underground coal mines, the division assisted in the development of proposed rules for roof, face, and rib support and for explosives and blasting as well as preproposal draft standards for ventilation. In the area of metal and nonmetal mine safety and health, the division assisted in the development of final rules consolidating and recodifying all metal and nonmetal standards, final rules for fire protection, and proposed rules for gassy mines and for equipment and machinery. The division also played a key role in the development of two proposals to revise MSHA's mining equipment approval program. One proposal would introduce testing by the applicant, rather than the agency, for certain categories of mining equipment and would increase emphasis on MSHA auditing of approved products. The other proposal would revise and update MSHA's schedule of fees for product approval to reflect the current cost to the Government for these services provided to the private sector. The proposals were being readied for departmental clearance at fiscal year's end.

In the legal advice area, the division provided legal review of more than 200 petitions for modification of safety standards and rendered 65 formal legal opinions at the request of MSHA and the mining community.

During the fiscal year, approximately 1,400 new cases were filed with the Federal Mine Safety and Health Review Commission, including 1,100 civil penalty cases filed on behalf of the Secretary under section 110 of the Mine Act. While a majority of these cases were handled by regional offices, the division continued to handle approximately 200 cases requiring close coordination with the MSHA national office. The division also handled all litigation before the Department's administrative law judges arising

ing out of petitions for modification of MSHA standards. During the year, 12 new petition cases were referred to the division. The division also processed 30 actions for temporary reinstatement on behalf of miners who were discharged because of their exercise of statutory rights under the Mine Act.

Division trial attorneys spent a significant part of the year assisting MSHA accident investigators and responding to federal suits arising from these matters. In late December 1984, a mine fire tragically claimed 27 lives at the Emery Coal Company's Wilberg Mine near Price, Utah. The fire refused to yield to valiant rescue and recovery efforts, and the mine was sealed for a time to quench the fire. The division worked closely with MSHA from the outset and throughout all phases of the recovery, sealing, reopening of the mine, and the on-going accident investigation. These efforts included assisting MSHA in the formal questioning of over 75 people. In addition, the division, in conjunction with the United States Attorney's Office in Salt Lake City, Utah, defended several lawsuits filed against the Secretary stemming from this disaster. The principal case was filed by the Utah press and electronic media which sought to be present during MSHA's questioning of witnesses for the purpose of discovering the causes of the fire. As is customary in major accident investigations, MSHA permitted State mine safety officials, the operator, and representatives of miners to be present, but excluded the press and public in the interest of obtaining accurate and candid statements. Verbatim transcripts of the questioning sessions were released following the sessions. The district court, in a complex ruling, permitted MSHA to complete its questioning as planned but ruled that the media had a limited right of access to these types of proceedings. *Society of Professional Journalists v. Secretary of Labor*, Civ. No. C-85-0070W (D. Ut. Aug. 22, 1985). MSHA continued to defend its investigatory practices as the fiscal year closed. Also during the year, the division assisted MSHA during the investigation of a roof fall accident at Bon Trucking Company's mine in Harlan County, Kentucky, and in the writing of the Greenwich Mine explosion accident report. Finally, the federal court in the Eastern District of Kentucky in *Blue Diamond Coal Co. v. Andrus*, Civ. Nos. 78-9, 79-145 and 79-146 (June 14, 1985), issued a final order refusing to reverse the previous holding that the long delayed accident report concerning the 1976 Scotia Mine explosion could only be issued with a caveat concerning the report's contents. The court authorized release of the report once all state tort litigation has been concluded.

Administrative litigation arising out of two previous mine accident investigations was successfully concluded. The contests of

citations issued in the Grundy Mine Company explosion on December 8, 1981, and the Adkins Coal Company explosion on December 7, 1981, were resolved by civil penalty payments of \$27,000 and \$57,000, respectively. In another decision, the Commission's administrative law judge imposed civil penalties totaling \$22,500 against an operator who recklessly exposed two miners to "significant" radon daughter exposures. *MSHA v. Atlas Minerals Co. Inc.*, 7 FMSHRC 782 (May 31, 1985).

Collection of unpaid civil penalties remained a matter of significant concern to the division and MSHA. More than \$300,000 in overdue civil penalties was collected through the efforts of division attorneys. In addition, the division worked closely with MSHA to revise its collection procedures to conform them to the requirements of the newly implemented Federal Claims Collection Act as well as assisted MSHA in establishing a group of field collection investigators to assist in contacting debtors and in gathering the necessary evidence to support collection litigation. Finally, 150 Freedom of Information Act matters were handled by the division, many involving discovery-type requests for investigative reports.

The Commission issued several significant decisions during the year. In the discrimination area the Commission ruled, for the first time, that a miner may refuse work where he reasonably and in good faith believes that another miner will otherwise be endangered. *Secretary of Labor on behalf of Cameron v. Consolidation Coal Co.*, 7 FMSHRC 319 (March 28, 1985). The Commission also held that the Secretary could not be a defendant in a discrimination action brought under the Mine Act. *Roland v. Secretary of Labor*, 7 FMSHRC 630 (May 28, 1985), *appeal docketed*, No. 85-1828 (10th Cir. June 5, 1985). Finally, the Commission concluded that laid-off individuals who were bypassed for recall because of a lack of statutorily required training had not been discriminated against because they were not "miners" within the meaning of the Mine Act. *United Mine Workers of America on behalf of Rowe v. Peabody Coal Co. and Secretary of Labor on behalf of Williams v. Peabody Coal Co.*, 7 FMSHRC 1357 (Sept. 30, 1985); *Secretary of Labor on behalf of Acton v. Jim Walter Resources, Inc.*, 7 FMSHRC 1348 (Sept. 30, 1985).

In other cases the Commission established that a coal mine operator must maintain a clear travelway on both sides of all belt conveyors, specifically including coal-carrying belt conveyors. *Secretary of Labor v. Jim Walter Resources, Inc.*, 7 FMSHRC 493 (April 29, 1985); *Secretary of Labor v. Jim Walter Resources, Inc.*, 7 FMSHRC 506 (April 29, 1985); *Secretary of Labor v.*

Southern Ohio Coal Co., 7 FMSHRC 509 (April 29, 1985). The Commission ruled that a coal loading facility that stores, mixes, crushes, and sizes coal in order to make it suitable for a particular use or to meet market specifications constitutes a "mine" within the meaning of the Mine Act. *Secretary of Labor v. Mineral Coal Sales, Inc.*, 7 FMSHRC 615 (May 16, 1985). The Commission also held that MSHA may not rely upon guidelines in determining whether to approve ventilation plans or other mine plans submitted by an operator for approval. *Secretary of Labor v. Carbon Country Coal Co.*, 7 FMSHRC 1367 (Sept. 30, 1985). Finally, in a series of cases involving alleged misconduct on the part of a Commission administrative law judge, the Commission concluded that the judge had violated several Commission rules and procedures, that the judge had engaged in several instances of misconduct, and that his charges of misconduct on the part of certain other persons were unfounded. *Secretary of Labor on behalf of Clarke v. T. P. Mining, Inc.*, 7 FMSHRC 989 (July 2, 1985), and 7 FMSHRC 1010 (July 10, 1985); *Secretary of Labor v. Belcher Mine, Inc.*, 7 FMSHRC 1019 (July 10, 1985); *Secretary of Labor on behalf of Williams v. Peabody Coal Co.*, 7 FMSHRC 1136 (Aug. 5, 1985).

The division enjoyed another successful year in its appellate court litigation. The most significant litigation handled by the division involved a suit to compel the Secretary to promulgate an emergency temporary standard governing underground miners' exposure to radiation or, alternatively, to revise the radiation standards on an expedited basis. The division was successful in having the case transferred from federal district court to the District of Columbia Circuit. After the petitioners withdrew their claim for an emergency temporary standard, the court of appeals ruled that the Secretary had not unreasonably delayed in revising the radiation standards. *Oil, Chemical and Atomic Workers International Union v. Zegeer*, 768 F.2d 1480 (D. C. Cir. 1985). In *United Mine Workers of America v. FMSHRC and Kitt Energy Corp.*, No. 728 F.2d 1477 (D. C. Cir. 1985), the court clarified that the "intervening clean" inspection which will remove an operator's liability for withdrawal orders under section 104(d) of the Mine Act must be an inspection or combination of inspections covering the entire mine and focusing on all hazards. In *Brock on behalf of Parker v. Metric Constructors, Inc.*, 766 F.2d 469 (11th Cir. 1985), the court concluded that an operator presented with protected work refusals violates the antidiscrimination provision of the Mine Act, if it merely offers the miners the choice of returning to hazardous conditions or going home without pay. However, in *Old Dominion*

Power Co. v. Donovan, No. 84-1942 (4th Cir. Sept. 18, 1985), the court ruled that an electric utility company which sells electricity to a mine operator and performs incidental services at a substation on mine property cannot be cited under the Mine Act as an "independent contractor."

Occupational Safety and Health

In the area of standards development and promulgations, the division provided extensive assistance to the Occupational Safety and Health Administration (OSHA) during the fiscal year. In the health standards arena, decisions on a short term exposure limit (STEL) for ethylene oxide and on whether to proceed with a field sanitation standard were published in the *Federal Register*. Additionally, OSHA's work on a proposed regulation on benzene and the final rule on cotton dust for textiles and nontextiles was completed. Work was expedited to develop a proposal for formaldehyde. In the safety arena, standards were proposed on presence sensing device initiation for mechanical power presses, powered platforms for exterior buildings maintenance, and concrete and masonry construction.

The extraordinary number of OSHA hearings in the previous fiscal year produced a need for extensive record review and evidentiary analysis on such standards as asbestos, ethylene dibromide, grain handling, oil and gas well drilling and servicing, electrical safety for construction, safety testing or certification of workplace equipment, suspended work platforms, and underground construction.

In fiscal 1985, the courts issued several significant decisions affecting OSHA in the areas of standards, inspections, and enforcement. There were two significant decisions in the standards area. In *Forging Industry Ass'n. v. Secretary of Labor*, 773 F.2d 1436 (4th Cir. 1985), a unanimous decision by an eight-judge en banc court, the Fourth Circuit upheld OSHA's hearing conservation amendment to its standard regulating employee exposure to noise, reversing an earlier adverse holding by a three-judge panel. The court held that the amendment was within OSHA's statutory authority, because, although some hearing loss is not work-related, the amendment was directed toward abating noise occurring in the workplace at levels that have been shown to pose a substantial excess risk to employees' hearing. The court also found that the amendment satisfies the prerequisites that have been established by the Supreme Court for OSHA's issuance of a health standard in that the amendment will reduce a significant risk of harm and is economically and technically feasible. The court rejected each

of numerous challenges to individual provisions in the amendment, finding that each of the challenged provisions is valid because it is reasonably related to the purpose of the Act. Finally, the court upheld the agency's exemption of the oil and gas well drilling industry based on OSHA's statement that a hearing conservation standard for that industry would be included in a special standard comprehensively addressing the hazards of that industry.

In another important standards case, the Third Circuit largely upheld OSHA's hazard communication standard but found certain provisions invalid. *United Steelworkers of America v. Auchter* 763 F.2d 728 (3d Cir. 1985). (This case is more fully discussed in the report of the Division of Special Appellate and Supreme Court Litigation).

The courts issued five important decisions dealing with OSHA's authority to conduct workplace inspections. In *Establishment Inspection of Kast Metals Corp.*, 744 F.2d 1145 (1984), the Fifth Circuit held that, while OSHA's plan for targeting employers for inspection is a "rule" within the definition of the Administrative Procedure Act, the plan is exempt from notice and comment rulemaking, because it is a procedural rule which does not have substantial impact on the rights of the regulated parties. In *Donovan v. Enterprise Foundry*, 751 F.2d 30 (1984), the First Circuit held that OSHA was not prohibited from using personal sampling devices in conducting an inspection, on the ground that the warrant failed to expressly state that OSHA would use such devices and that OSHA had no duty to demonstrate to the magistrate that the use of such devices was reasonably necessary and would not unduly burden the employer.

In other warrant-related cases, the Tenth Circuit, in *Donovan v. Hackney, Inc.*, 769 F.2d 650 (1985) and the Fifth Circuit in *Donovan v. Gretna Machine & Ironworks, Inc.*, 769 F.2d 1110 (5th Cir. 1985), refused to allow employers to conduct discovery into the formulation of OSHA general schedule inspection plans in the context of a court action seeking enforcement of a warrant authorizing OSHA to conduct a workplace inspection. The courts ruled that the plan satisfies constitutional standards for probable cause and that a court reviewing a magistrate's finding of probable cause for an inspection based on the plan should not look beyond the evidence presented to the magistrate, absent a preliminary showing of intentional or reckless falsehood in the warrant application. In the *Gretna* case, however, the court found that the particular warrant application was insufficiently specific with respect to the manner in which the employer had been selected for inspection under the plan. The D. C. Circuit, in *Donovan v. A. A. Beiro Construction Co.*, 746 F.2d 894 (1984), held that a subcontractor

on a large, open construction site in which employees of all the various contractors worked throughout the site had no reasonable expectation of privacy from a warrantless inspection consented to by the property owner.

In the enforcement area there were also several important decisions. The Eleventh Circuit in *Donovan v. Int'l Chemical Workers Union*, 748 F.2d 1490 (1984), and the Seventh Circuit in *Donovan v. Allied Industrial Workers*, 760 F.2d 783 (1985), joined the other circuits in holding that (1) the decision to settle a citation is within the Secretary's prosecutorial discretion and enforcement powers, (2) once the employer withdraws its contest, the employees are entitled to challenge only the abatement period, and (3) the Review Commission is without jurisdiction to review any objection to either the method of abatement or the penalty imposed. The Sixth Circuit, on the other hand, held in *Cuyahoga Valley Ry. Co. v. United Transportation Union*, 748 F.2d 340 (1984), that the Secretary's authority to withdraw an OSHA citation is subject to review by the Review Commission and to objection by a party employee representative. The Secretary has filed a petition for certiorari in *Cuyahoga*. On another procedural issue, the Fifth Circuit held that an employer is barred from challenging in an enforcement proceeding the substantial validity of a provision of a standard which it had previously failed to challenge in pre-enforcement proceedings in which it had participated. *RSR Corp. v. Donovan*, 747 F.2d 294 (1984). In another case involving the same employer, the court held that (1) the employer's action placing medical removal benefits in escrow pending the outcome of litigation challenging the lead standard violated the standard's requirement that an employee's earnings be "maintained" during the period of medical removal and (2) the termination of an employee based on the employee's lead excretion and absorption rate before the employee has been removed from exposure to lead for at least 18 months violated the lead standard. *RSR Corp. v. Brock*, 764 F.2d 355 (5th Cir. 1985).

In other enforcement actions, the First Circuit in *Donovan v. A. Amorello & Sons, Inc.*, 761 F.2d 61 (1985), held that in disputes between the Review Commission and the Secretary regarding the proper interpretation of one of the Secretary's regulations, the Secretary's interpretation is entitled to deference. Finally, the First Circuit in *Donovan v. Daniel Marr & Son Co.*, 763 F.2d 477 (1985), and the Third Circuit in *Donovan v. Adams Steel Erection Inc.*, 766 F.2d 804 (1985), held that general construction safety standards apply to the steel erection industry in the absence of a specific applicable requirement in the steel erection standard.

In the area of administrative adjudication, the Occupational Safety and Health Review Commission was less active than in prior years, first, because of a frequent one-to-one split between the two sitting Commissioners, which resulted in the affirmance of judges' decisions without precedential effect, and because of a 4-month period when the Commission had only one commissioner and lacked a quorum. This decline in the number of administrative decisions was offset by a substantial increase in cases involving the antiretaliation provision of section 11(c) of the Occupational Safety and Health Act (Act), willful citations, and potential criminal prosecutions. The increased caseload reflects OSHA's increased efforts in these areas of the law. Significant matters involving detailed precitation review have included Aerlex, Inc. (fireworks explosion) and Union Carbide (chemical leaks). The division's participation in the Bureau of Labor Statistics-OSHA revision of the recordkeeping guidelines also continued.

A number of novel issues arose in connection with the efforts of the Chicago Regional Office to enforce an administrative subpoena requiring the production of a ruptured refinery vessel for the purpose of destructive testing. The issues included not only OSHA's authority to issue such a subpoena but also the effect of a prior State court discovery order governing possession and testing of the vessel by the parties in a private action. The Chicago office prevailed on all issues before the federal district court, and the vessel's owner, Union Oil Co., has appealed. The Chicago office was also involved in OSHA's first action to enforce a court of appeals enforcement decree by having the employer, Inland Steel Corporation, found in contempt of court. Prior to this action, the company entered into several settlements with OSHA in which the company agreed to abate numerous violations of the Coke Oven Emissions standards. The contempt action was instituted after OSHA determined that Inland Steel had failed to comply with the most recent abatement agreement which had been entered into under the jurisdiction of the court.

The division assisted OSHA in preparing revisions to enforcement staffing benchmarks for twelve State plans, in accordance with the court of appeals decision in *AFL-CIO v. Marshall*, 570 F.2d 1030 (D.C. Cir. 1978). The division further assisted in preparing *Federal Register* notices of final approval of eight of these State plans under section 18(e) of the Act. The division continued to litigate *Gray v. Brock*, Civ. No. C84-7736 CAL (N.D. Calif., filed Dec. 6, 1984), in which the plaintiff, who had filed complaints with Federal OSHA and the California State plan about retaliation against him for occupational safety activity, sought an

injunction requiring OSHA to conduct withdrawal proceedings with respect to the California State plan. Plaintiff claimed that the State does not adequately enforce its law forbidding retaliation of this kind. OSHA investigated this claim and the State has recently enacted legislation, effective January 1, 1985, mandating improved procedures. The division also filed a statement of the agency's position, as requested by the court, in *Pymm Thermometer Corp. v. City of New York*, Civ. No. 85-CIV-0496 (S.D. N.Y., filed Jan. 21, 1985), in which the plaintiff, a thermometer manufacturer whose employees were exposed to mercury and who had been cited by OSHA for this exposure, sought an injunction against the New York City Health Department to bar enforcement action by that agency regarding the mercury hazard. Pymm and OSHA argued that the city's action is preempted by section 18 of the Act, because Federal OSHA standards cover the mercury exposure hazard and New York does not have a State plan (except for public-sector employees).

Plan Benefits Security

During the fiscal year the division received favorable decisions in a number of significant Employee Retirement Income Security Act (ERISA) cases at both the appellate and district court levels.

In *Brock v. Bierwirth*, 754 F.2d 1049 (2d Cir. 1985), the court of appeals reversed the district court's dismissal of the Secretary's complaint and remanded the case for further proceedings. The district court had held, after a bench trial, that the Grumman Corporation Pension Plan had not suffered any "loss" as a result of the plan trustees' acquisition of Grumman stock in an effort to prevent a takeover of the plan sponsor. The court of appeals rejected the district court's conclusion that the plan had suffered no loss, because it had sold the stock for more than the purchase price. Rather, the measure of loss to the plan set forth by the court of appeals involves comparing the actual investment performance of the Grumman stock during the period the plan held the stock with the performance of alternative investments (i.e., assuming that the aggregate dollar amount of the purchase price of the stock had been invested in a manner not involving a breach of fiduciary duty). Uncertainties in the amount of loss would be resolved against the trustees.

The Eleventh Circuit, in *Brock v. Tricario*, Appeal No. 84-5565 (July 9, 1985), issued a decision affirming a 1984 district court ruling that the trustees of two employee benefit plans had violated their ERISA duties of prudence and loyalty by the purchase of whole life insurance policies for the plans' participants

when term life policies were far less expensive and better suited to the needs of the participants. The district court also found, and the court of appeals affirmed, that certain trustees had accepted cash and other types of payments from the principal of the insurance company involved in return for their decision to vote in favor of purchasing the whole life policies. The court of appeals also held that the district court did not abuse its discretion by enjoining the defendants from acting as fiduciaries to employee benefit plans and ordering them to pay restitution.

In *Brock v. Carlough*, 753 F.2d 166 (1985), the United States Court of Appeals for the District of Columbia summarily affirmed a judgment in the Department's favor, requiring the trustees of the National Stabilization Agreement of the Sheet Metal Industry Trust Fund to pay approximately \$400,000 in benefits to plan participants. The district court had found that the trustees violated ERISA section 404 by failing to pay the benefits in accordance with the plan documents and by misinforming the participants as to the terms of those documents.

In another important ERISA case decided in the District of Columbia Circuit, *Fink v. National Savings & Trust Co.*, Appeal No. 84-5081 (Sept. 3, 1985), the court handed down the first appellate decision significantly construing section 413, the statute of limitations. The Secretary had participated as amicus urging reversal of the district court decision. The court of appeals, in reversing the district court, held that, unless a particular transaction was per se illegal, the mere reporting of that transaction in a plan's annual report (filed with the Department) was not sufficient to place a plaintiff on notice of a violation of ERISA and, thus, trigger the statute of limitations.

A number of district court decisions issued during the year concerned the obligations and liabilities of both plan fiduciaries and parties who deal with plans in an improper fashion.

Brock v. Ashplant, No. 83 Civ. 1455 (W.K.) (S.D.N.Y. Sept. 19, 1985), was commenced in 1983 against the bank trustee and four investment committee members of the Tobin Packing Company Employees' Profit Sharing Plan. The suit involved an investment of one-half of the plan's assets in Tobin stock at a time when the company was in financial distress.

Following the trial against the single defendant who had not settled with the Department, the court held the investment to be imprudent. In addition, it was found that the purchase was not in the interest of the participants but had been made in an effort to help the corporation. The Department submitted a proposed judgment against the defendant in excess of \$600,000.

In *Brock v. Damon*, No. 83-1161-CV-W-8 (W.D. Mo. Aug. 12, 1985) the court ordered the defendants to pay approximately \$232,000 to the Damon Alarm Corporation Profit Sharing Plan. The defendants, trustees of the plan, had been found in an earlier opinion of the court to have breached their fiduciary duties by investing 99 percent of the plan's assets in certificates of deposit at a Mexican bank during the period 1981-1983, a period of economic instability in Mexico.

In a series of orders issued by the court in *Brock v. Mazzola*, C-79-134-SAW (N.D. Calif. Dec. 27, 1984), the defendants, who had previously been found to have breached their fiduciary duties, were ordered to restore to the plan all legal fees which had been expended by the plan in their defense. The court also enjoined the trustees from receiving reimbursement for those expenses from the union sponsor.

In *Donovan v. Cody*, No. CV-83-2270 (E.D.N.Y. Jan. 14, 1985), the court ruled that ERISA provided authority for the Department to seek broad financial and injunctive relief against persons who, although not fiduciaries, participated in the fiduciary violations of others. A consent order was entered in the same case on April 15, 1985. The order resolved the Department's multiple claims against the trustees of the four Teamsters Local 282 Benefit Funds. Among other relief, the trustees were ordered to restore \$600,000 to the various funds, and an independent trustee was appointed as well as an independent real estate manager. Under the order, the independent trustee has the sole responsibility for negotiating contracts between the funds and the unions, if any, and for adopting a travel expense reimbursement policy consistent with the requirements of ERISA. The defendant trustees were also enjoined from violating the provisions of sections 404 and 406 of ERISA for a period of 5 years.

The division also achieved the successful resolution of a number of important cases by judicially approved consent orders.

In *Donovan v. The Retirement Fund Trust of the Plumbing, Heat and Piping Industry of Southern California*, No. 84-9967 AHS (BX) (C.D. Calif. 1985) (the "Foundation" case), the Department filed suit against the trustees of two plans covering employees in the construction industry in Southern California — the Retirement Fund Trust of the Plumbing, Heat and Piping Industry of Southern California and the Carpenters Pension Trust for Southern California. In its complaint, the Department alleged that the defendant trustees caused these plans to participate in commitments issued to developers of residential real estate development projects to provide below-market rate home mortgages to purchasers of units in

the developments. The suit asserted that the trustees, in causing the plans to engage in these transactions, failed to discharge their fiduciary duties both in a prudent fashion and solely in the interest of the plans' participants and their beneficiaries, as is required by section 404(a) (1) of ERISA.

By consent order entered January 9, 1985, the defendant trustees agreed to pay the plans approximately \$1.5 million and were enjoined from making any commitment to provide residential mortgage loans, unless the commitment fees and interest rates have been approved by an independent fiduciary whose appointment is subject to objection by the Department.

On February 18, 1985, the Department filed a complaint against Roland R. Pennington, Jr., and other trustees of the Retirement Plan for Employees of Control Specialities, Inc., *Ford v. Pennington, et al.*, No. H-85-1858, (S.D. Texas), alleging, among other things, that the trustees caused the plan: (1) to transfer title to a Philadelphia residence (owned by the plan) without obtaining payment therefore, (2) to make over \$335,000 in loans and mortgages at below-market interest rates during a time in which the plan had insufficient assets to fund them, (3) to purchase stock in the J.E. Loneragan Co. as part of Pennington's plan to acquire it, and (4) to make several loans to companies and individuals for the benefit of Pennington and other persons whose interests were adverse to those of the plan. A consent order, which was filed the same day, required the trustees to make payments totalling \$160,000 to the plan. It also required Pennington to purchase the Loneragan stock from the plan for over \$350,000 and to reimburse the plan for the \$110,000 purchase price plus interest for the Philadelphia property. The defendants were also barred from serving as fiduciaries to any ERISA-covered plans for 10 years.

On July 11, 1985, a complaint and consent order were filed in *Brock v. Quigg*, No. 84-0863-A (E.D. Va.). As a remedy for a prohibited sale of employer stock by an employee stock ownership plan (ESOP) to its trustees, the consent order provided for the appointment of an independent fiduciary for the ESOP. The independent fiduciary will determine whether the ESOP should sell its interest in the company and, if so, to whom and on what terms. For five years following the execution of the independent fiduciary's duties, the investments of all the employer's employee benefit plans will be managed by independent fiduciaries, appointed with the Department's approval. The order also would bar the ESOP trustees from serving as fiduciaries to any plans for a period of 3 years.

The division also filed complaints in a number of ERISA cases which remained pending at the year's end. Among these, the most

significant was *Brock v. Hall-Mark Electronics Corp.*, Civ. No. 84-5874 (N.D. Ala. filed Dec. 13, 1984). The suit was filed against trustees of a profit sharing plan, asking for restitution of losses and disgorgement of profits totalling more than \$17 million dollars. The complaint alleges that the trustees (major shareholders, officers, and directors of Hall-Mark, the plan sponsor) breached their fiduciary duties under ERISA by causing the plan to sell its shares of Hall-Mark stock to the sponsor at \$4 per share in December 1980 without having had an independent appraisal done. In August 1981, the trustees, in their corporate capacities, sold the corporation for \$100 per share.

On October 29, 1984, the Department filed *Brock v. Tomasso*, CA. No. CV-84-4280-LDW (E.D.N.Y.), against current and past trustees of the Allied Security Health and Welfare Fund and related parties. The complaint alleges a number of breaches, including imprudent investment in an off-shore insurance company, failing to collect and secure employer contributions, and entering into imprudent service provider arrangements for a prepaid legal service plan.

Also in October 1984, the Department filed *Brock v. Lindemann*, Civ. No. 3-84-1814-R (N.D. Tex.), against the former trustee of the Lee Optical and Associated Companies Pension and Profit Sharing Plan alleging losses exceeding \$800,000 arising from the trustee's acceptance of two over-valued properties in satisfaction of a judgment held on behalf of the plan.

On April 26, 1985, the Department instituted suit against the fiduciaries of the Luggage Workers Union, Local 61 Health Benefit Plan, a related vacation plan, and the union. *Ford v. Wright*, Civ. No. 84-2378 (E.D. Pa.). The complaint alleges violations of ERISA in connection with the use of plan assets for the purchase of real estate in the name of the union, undocumented payments by the plan to the union for operational expenses, direct and indirect disbursements of plan assets to plan fiduciaries, and transfer of vacation plan assets to the union. The complaint seeks restitution of losses, removal of plan trustees, and injunctive relief.

On May 20, 1985, the Department filed a complaint in the District Court for the Southern District of Iowa against James and Joan Wieder, as trustees of the Hockenberg Companies Employee Profit Sharing Plan and Trust. *Brock v. Wieder*, Civ. No. 85-410 (S.D. Iowa). The complaint alleges that the trustees caused the plan to purchase 10,000 shares of stock in the plan sponsor without adequately valuing the stock and that they subsequently caused the plan to engage in a prohibited sale of the stock to the plan sponsor in exchange for a promissory note and mortgage.

A number of significant developments took place during the fiscal year in the Department's pilot program decentralizing ERISA litigation to the San Francisco, Atlanta, and Boston regions. On March 5, 1985, a complaint was filed in *Brock v. Lupo*, No. 85-1713 (LBS) (S.D. N.Y.), charging the trustees of the Mason Tenders District Council Legal Services Fund of New York City with violation of their fiduciary duties by failing to establish and monitor the fund in a prudent manner. The complaint also charges the legal service provider with actively promoting and knowingly participating in the trustees' breaches of fiduciary duty by misrepresenting the number of hours of legal services provided to plan participants.

On April 4, 1985, a complaint was filed charging the plan trustees, plan counsel, and plan consultant with fiduciary and prohibited transaction violations in connection with several real estate and insurance matters. *Brock v. Tolkow*, No. 85-1276 (JMM) (E.D. N.Y.). The complaint also charged the trustees with failure to collect a delinquent loan to the plan counsel and with causing the plan to make excessive payments to the union for services rendered. The trustees were also charged with violation of section 411 of the Act by retaining a recently convicted felon as plan consultant.

In *Brock v. Eason*, (No. 85-3290 (JW) (S.D. N.Y.), the Department, on April 30, 1985, secured a judgment against the trustees and plan administrator of Local 20408 United Warehouse, Industrial and Affiliated Trades Welfare Fund, New York City, enjoining them from serving as fiduciaries to any employee benefit plan and ordering them to restore to the plan \$100,000 in losses caused by their breach of fiduciary duty. The suit charged the trustees with imprudence and prohibited transaction violations by making unsecured, interest free loans to certain union officials and with improperly compensating one of the trustees who was already receiving full-time pay as president of the union. On November 26, 1984, judgment was entered against one of the principal defendants charged with imprudently causing the Viner Bros., Inc. Employee Stock Ownership Plan to purchase shares of Viner Bros., Inc. stock from the parent corporation (LTM, Inc.) and exercising conversion rights of LTM, Inc. preferred stock into Viner common stock without an independent determination as to the value of the Viner shares. *Brock v. Brodell et al.* (No. 83-0419-B (D. Me.). At the time of the transaction, Viner Bros, Inc., a shoe manufacturer in Bangor, Maine, was in serious financial difficulty and its stock practically worthless. The judgment ordered repayment to the plan of \$80,000 in losses. A prior agreement for judgment with two other defendants resulted in the recovery of an additional \$37,500.

In *Donovan v. Jones*, No. H83-4566 (S.D. Tex.), a consent order was entered on April 8, 1985, requiring a profit-sharing plan trustee to repay over \$500,000 plus interest to the plan in connection with various prohibited and imprudent loans to the trustee, his wife, and a company owned by the trustee. The defendant was also permanently barred from serving as a plan fiduciary.

On September 17, 1985, a consent order was filed in *Brock v. Southern Association*, No. 85-1141-CIV-J-14 (M.D. Fla.), setting strict limitations on fees paid to service providers of a trade association health plan and requiring restitution of \$100,000 for excessive fees paid in the past.

In addition, the trustees of a Florida-based pension plan and employee stock ownership plan were ordered to correct over \$1.5 million in prohibited and imprudent loans to the plan sponsor and its subsidiaries, as well as to certain of the trustees themselves. The consent order, entered in *Brock v. Hunt*, No. 83-538-CIV-T-15 (S.D. Fla.), on September 28, 1985, also enjoined the defendant from engaging in future violations of the Act.

The division was also involved in a number of departmental regulatory and legislative initiatives. The Department has undertaken regulatory activity in several areas relating to the definition of the term "plan assets" under ERISA. The division was instrumental in developing a proposed regulation, published on January 8, 1985, delineating the circumstances under which the assets of an employee benefit plan would include an interest in the underlying assets of an entity in which the plan invests. The manager of those assets would be a fiduciary subject to the fiduciary responsibility provisions of ERISA. The Department simultaneously withdrew most of the provisions of a 1979 proposal and a 1980 proposal dealing with this issue. Division representatives participated in hearings on this proposal on May 6, 7, and 8, 1985.

In addition, the division aided in the preparation of a proposed alternative method of compliance with the reporting requirements of ERISA for entities deemed to be holding plan assets under the January 8 proposal. The proposed alternative method of compliance was published January 18, 1985, and is intended to avoid unnecessary burdens and administrative costs as a result of the interaction of the proposed plan asset regulation and ERISA's reporting requirements.

The division also had an important role in the consideration of requests for class exemptions to eliminate a number of restrictions on plan investment opportunities. On April 3 the Department adopted class exemption 85-88 enabling plans to invest in customer

notes originated by the employer maintaining the plan. On April 9 the Department adopted amendments to class exemption 81-8 expanding the relief provided for plan investments in short-term, money-market instruments.

On January 24 the Department proposed a class exemption to provide conditional relief for plan fiduciaries to effect securities transactions on behalf of plans. The proposed exemption would also provide relief for sponsors of insurance company pooled separate accounts to use their affiliates to effect or execute securities transactions for such accounts. The proposal would replace two prior class exemptions, Prohibited Transaction Exemptions 79-1 and 84-46, and would clarify the scope of exemptive relief, while providing for a more flexible administration of the conditions contained in the prior exemptions.

The division also played a major part in consideration of a class exemption request dealing with certain aspects of plan investments in commodity futures contracts. On August 16 the Department issued a letter delineating the extent to which statutory and regulatory relief are already available for futures transactions and requesting additional information regarding futures trading involving plan fiduciaries.

In the area of legislation, the division was directly involved in the development of a bill designed to improve the single-employer insurance program administered by the Pension Benefit Guaranty Corporation (PBGC). Central to this initiative will be the securing of a premium increase for the single-employer program to assure the continued financial viability of the PBGC. Along with the premium increase, the bill will seek a number of structural reforms designed to prevent plan sponsors from abusing the voluntary termination process by dumping unfunded liabilities on the PBGC.

Finally, the division has been involved in a number of regulatory projects designed to clarify the scope of certain ERISA provisions and facilitate investment and administrative decisions on behalf of employee benefit plans. Chief among these was the issuance of a press release on February 22 by the Department, PBGC, and the Internal Revenue Service (IRS) concerning the transfer of assets from a defined benefit pension plan to a defined contribution plan. An IRS information letter had indicated such transfers could occur without terminating the defined benefit plan. The joint release made it clear that the IRS letter did not address all of the implications of the transfer, including the effect of ERISA's requirement that plan assets be used for the exclusive

benefit of plan participants and beneficiaries. The release also reaffirmed the viability of the Administration's May 1984 guidelines relating to reversion of surplus assets to plan sponsors upon plan termination.

Special Appellate and Supreme Court Litigation

During fiscal year 1985, the division received three important decisions in the Supreme Court. First, in *Garcia and Donovan v. San Antonio Metropolitan Transit Authority*, 105 S. Ct. 1005 (1985), a pivotal Fair Labor Standards Act (FLSA) case, the Supreme Court ruled that the FLSA's minimum wage and overtime provisions may constitutionally be applied to municipally owned and operated mass transit systems. In so doing, the Court expressly overruled its previous decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976), that these FLSA protections could not constitutionally be applied to State and local government employees performing integral operations in areas of traditional governmental functions. In another critical FLSA decision, *Tony and Susan Alamo Foundation v. Secretary of Labor*, 105 S.Ct. 1953 (1985), the Court unanimously adopted the Department's positions that the commercial activities of a nonprofit religious organization are subject to the FLSA and that "associates" (adherents to the organization's religious tenets) who work in the organization's commercial activities in exchange for their subsistence are employees protected by the Act, despite their self-characterization as volunteers. The Court also agreed that application of the Act in these circumstances violates neither the "free exercise" nor the "establishment" clauses of the First Amendment. And in an Employee Retirement Income Security Act (ERISA) case in which we participated as *amicus curiae*, *Central States, Southeast, & Southwest Areas Pension Fund v. Central Transport, Inc.*, 105 S. Ct. 2833 (1985), the Court also agreed with the Department that ERISA permits the trustees of a multiemployer employee benefit plan to audit all records of an employer participating in the plan, including those pertaining to employees the employer contends are not covered, in order to verify that the employer is making contributions on behalf of all employees for whom they are due. In another case, *Herb's Welding, Inc. v. Gray*, 105 S.Ct. 1421 (1985), the Court held that a worker injured on a fixed drilling platform in State territorial waters is not covered under the Longshore and Harbor Workers' Compensation Act (LHWCA), because the worker was not "engaged in maritime employment."

The division also received numerous important decisions in cases litigated in the various courts of appeals, especially under

ERISA, the Occupational Safety and Health Act (OSH Act), and the Black Lung Benefits Act (BLBA). In the occupational safety and health area, the Ninth Circuit agreed with the Secretary in *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (1985), that the OSH Act applies to a tribal enterprise, rejecting the notion that "inherent tribal sovereignty" bars enforcement of this general Federal law on Indian reservations. The Ninth Circuit thus expressly disagreed with a Tenth Circuit decision in *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709 (1982), that the Act did not apply to a tribal enterprise of a different tribe. The Third Circuit decided numerous challenges to OSHA's hazard communication standard in *United Steelworkers of America v. Auchter*, 763 F.2d 728 (1985), holding, in agreement with the Department, that the rule is a standard rather than a regulation and thus preempts State hazard disclosure laws in the manufacturing sector; that, as to the hazard determination procedure, the Secretary reasonably rejected the National Institute of Safety and Health's list of toxic substances (RTECS) as listing substances that must be treated as hazardous; and that confidential agreements including liquidated damages clauses are reasonable as a traditional means of allowing access to trade secrets, while protecting the owner from irreparable harm. The court also remanded the case to the Secretary: (1) to expand the scope of the standard to industries other than manufacturing or to state reasons why such application would not be feasible, (2) to define "trade secret" so as not to include chemical identity information readily discoverable through reverse engineering, and (3) to adopt a rule permitting access to trade secrets by employees and their collective bargaining representatives. And, in *Matter of Cerro Copper Products Co.*, 752 F.2d 280 (7th Cir. 1985), the court upheld as constitutional a full-scope safety inspection under the OSH Act, pursuant to neutral departmental directives, in response to a specific employee complaint.

The division also twice successfully defended the constitutionality of the persuader reporting requirements of the Labor-Management Reporting and Disclosure Act (LMRDA) against First Amendment challenges of vagueness in *Master Printers of America v. Donovan*, 751 F.2d 700 (4th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3790 (U.S. April 25, 1985 No. 84-161) and *Humphreys, Hutcheson and Mosely v. Donovan*, 755 F.2d 1211 (6th Cir. 1985). In the latter case, which involved a law firm, the court also sustained the Department's position that the information required by the Act to be reported is not protected under the attorney-client privilege, holding that the statutory privilege is no broader than the common law privilege. (In *Brock v. The Rose Law Firm*,

786 F.2d 964 (8th Cir. 1985), discussed in the Labor-Management Laws section, the court rejected the Department's interpretation of the reporting provisions as requiring reports from persuaders of its labor relations services to all employers and, thus, did not discuss their constitutional validity.) Also under the LMRDA, the court held in *Brock v. Writers Guild of America, West, Inc.*, 762 F.2d 1349 (9th Cir. 1985), that the Act's fair election provisions do not preclude supervisors from running for union office.

In the ERISA area, in *California Hospital Association v. Henning*, (9th Cir. 1985), the court of appeals agreed with the Department's interpretation of ERISA's coverage of employee welfare benefit plans as not reaching such employer payroll practices as compensating employees out of general assets, while the employees are on vacation. Thus, ERISA does not preempt a State law regulating such traditional vacation pay. The division also prevailed in a critical appeal involving one aspect of the Department's extensive ERISA enforcement litigation against the Teamsters' Central States Pension and Health and Welfare Funds. In *Donovan v. Robbins*, 752 F.2d 1170 (1985), the Seventh Circuit sustained our position that the district court had erroneously refused to enter a consent decree for monetary and injunctive relief negotiated with current trustees, thus obviating the need for a trial on that aspect of the litigation. (A discussion of the district court litigation appears in the report of the Division of Special Litigation.)

Litigation under the BLBA also produced numerous significant court of appeals decisions. In *Gibas v. Saginaw Min. Co.*, 748 F.2d 1112 (6th Cir. 1984), *cert. denied*, 105 S.Ct. 2357 (1985), the court upheld the validity of the regulation requiring evidence that the miner's disability did not arise "in whole or in part out of coal mine employment" to rebut a presumption of total disability due to pneumoconiosis; the regulation does not permit benefits for partial disability, as the Benefits Review Board had assumed in invalidating it, but only benefits for total disability where pneumoconiosis is a contributing cause. And, in *Kaiser Steel Corp. v. Director, Office of Workers' Compensation* 757 F.2d 1078 (1985), the Tenth Circuit upheld the constitutionality of the regulation according a rebuttable presumption of total disability due to pneumoconiosis to a miner with 10 years' coal mine employment and either x-ray evidence of pneumoconiosis or ventilatory studies indicating a respiratory impairment. In *B & G Construction Co. v. Harriger*, 760 F.2d 255 (1985), the Third Circuit, without opinion, affirmed the Benefits Review Board's interpretation of exposure to "coal dust" as including exposure to all dust in the regulation defining a responsible operator. The Tenth Circuit ruled

similarly on a related issue in *Morrison-Knudsen Company, Inc. v. Schaechterle and Director, Office of Workers' Compensation Programs*, No. 83-1777 (Oct. 9, 1984), that a mine transportation worker need not exclude the time not exposed to dust from coal in establishing eligibility. And the Eighth Circuit ruled in *Coughlan v. Director, Office of Workers' Compensation*, 757 F.2d 966 (1985), that a claimant with fewer than 10 years' coal mine employment is entitled to a rebuttable presumption of entitlement, when it is established that the claimant suffered from pneumoconiosis arising out of coal mine employment.

Under the LHWCA, before the 1984 amendments, the D.C. Circuit held in *Carter v. Director, Office of Workers' Compensation Programs* 751 F.2d 1398 (1985), that the Director cannot withhold from "second injury" Special Fund compensation payments monies equal to the amount recovered by the claimant from a third-party tortfeasor, where it is impossible to calculate the portion of the total LHWCA compensation attributable to the subsequent job-related injury, rather than the prior injury.

In the employment and training area, the Fourth Circuit reaffirmed in *Onslow County, North Carolina v. U.S. Department of Labor*, No. 84-1915 (July 22, 1985), the prime sponsor's strict accountability for Comprehensive Employment and Training Act funds as well as the Secretary's authority to recover misspent funds, including periods where audits took place less frequently than every 2 years. The court also held that the Secretary must consider whether repayment should be waived in view of "special circumstances." And, finally, in litigation under the Redwood National Park Expansion Act, the court of appeals held in *Cavender v. Donovan*, 752 F.2d 1376 (9th Cir. 1985), that an employee who quit her job voluntarily for reasons unrelated to her work or her employer's business, was ineligible for Redwood Act benefits.

Special Litigation

During the fiscal year 1985, the division continued its active litigation of a number of cases involving the Teamsters' Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, as well as the Southern Nevada Culinary and Bartenders Pension Trust. All of these cases are related to the enforcement of the Employment Retirement Income Security Act of 1974 (ERISA).

In *Brock v. Fitzsimmons*, No. 78 C 342 (N.D. Ill.), the Secretary has challenged a variety of the investments and investment procedures of the Teamsters' Pension Fund carried out by a number of former fund fiduciaries. The litigation has produced

substantial results to safeguard the future operations of the fund, including a consent decree to resolve the Secretary's claims under which former Attorney General William B. Saxbe was appointed as Independent Special Counsel to monitor the fund's compliance with ERISA and the consent decree, and Morgan Stanley, Inc., was appointed as the Named Fiduciary of the fund to manage and control its investment assets. Litigation of the Secretary's claims against the fund's former fiduciaries, seeking restitution of over \$70 million in alleged investment losses and prospective injunctive relief against the former fiduciaries' association with ERISA covered plans, was delayed, however, by a ruling of the district court on August 27, 1984, approving the settlement of private class actions raising similar claims to those of the Secretary. Under this settlement, the Secretary's remaining claims against the fund's former fiduciaries were dismissed over the Secretary's objections. This dismissal was appealed by the Secretary to the United States Court of Appeals for the Seventh Circuit on October 25, 1984. Following submission of written briefs, oral argument was held on the Secretary's appeal on April 23, 1985. There had been no decision on the appeal at the end of the fiscal year.

On June 28, 1985, in *Brock v. Nellis*, No. MCA 81-0245-RV (N.D. Fla.), the district court dismissed the Secretary's complaint against two attorneys, who were alleged by the Secretary to have acted as fiduciaries of the Teamsters' Pension Fund in connection with the decision to bid at a foreclosure sale. The complaint alleged that the attorneys had acted imprudently and failed to comply with plan documents when they participated in a decision to bid more than several times the appraised value of the foreclosed property. The court ruled the complaint was time barred, and the Secretary filed an appeal with the Eleventh Circuit on August 30, 1985.

The trial of the Secretary's claims related to the Teamsters' Health and Welfare Fund in *Brock v. Robbins*, No. 78-C-4075 (N.D. Ill.), commenced last fiscal year, was concluded on November 8, 1984. After the submission of a post trial memorandum, but before the announcement of a decision by the court, the Secretary was solicited by certain defendants to renew settlement negotiations. The negotiations that ensued ultimately resulted in a partial settlement of the claims in *Robbins* as well as a partial settlement of the untried claims in *Brock v. Dorfman*, No. 82 C 7951 (N.D. Ill.).

In the *Robbins* case, the Secretary alleged that certain transactions between fiduciaries of the Teamsters' Health and Welfare Fund and the late Allen M. Dorfman and the entities he controlled

violated the fiduciary responsibility and prohibited transaction provisions of ERISA. The *Dorfman* case alleged that increases in fees granted to the Dorfman enterprises were imprudent and constituted prohibited transactions. The settlement entered by the court on February 14, 1985, included the entry of a consent decree between the Secretary, the Fund, and its current trustees that imposed strict financial controls on the Fund, required future compliance with all aspects of ERISA, and, most significantly, appointed former Attorney General William B. Saxbe as the Independent Special Counsel to the fund to monitor its compliance with ERISA and the consent decree and to make appropriate reports to the court and the Department. Mr. Saxbe has been serving in a similar capacity monitoring the activities of the Teamster's Pension Fund as a result of the *Fitzsimmons* consent decree described above.

With respect to the defendants associated with Allen M. Dorfman, the settlement required the corporate defendants to cease doing business and permanently dissolve. Two individual defendants associated with Mr. Dorfman were permanently barred from dealing with employee benefit plans. Finally, the monetary aspects of the Secretary's claims were settled for more than \$6.4 million.

The settlement did not compromise the Secretary's claims against the former trustee defendants of the Fund or the Fund's former executive director. The court's decision with respect to the unsettled *Robbins* claims is expected early next fiscal year.

As the result of the litigation in *Fitzsimmons*, *Robbins*, and *Dorfman*, the Secretary's objective to safeguard the future operations of the Teamsters' Health and Welfare and Pension Funds has been met. The recurrence of past abuses involving what now totals more than \$6 billion in assets of the Pension Fund has been precluded by the management and control of these assets having been placed in the hands of Morgan Stanley, Inc., as the fund's named fiduciary. The abuses which grew out of the dependency of the Health and Welfare Fund on companies controlled by Allen M. Dorfman have been precluded by the complete dissolution of the Dorfman corporations and a lifetime bar against further involvement with ERISA covered plans imposed on Dorfman's associates. Finally, over \$17.5 million has now been paid to the Health and Welfare and Pension Funds as partial restitution for the losses experienced by the funds prior to the partial settlements of the Secretary's litigation. The continuation of the litigation against the former trustees of both funds should result in yet additional sums being recovered for past abuses, as well as a bar on these individuals' future involvement with ERISA plans.

In *Brock v. Schmoutey*, No. CV-LV-77-47-RDF (D. Nev.), the Secretary had obtained a judgment on May 15, 1984, for the

benefit of the participants and beneficiaries of the Southern Nevada Culinary and Bartenders Pension Trust of \$36.5 million against Morris A. Shenker and companies he owned or controlled. This was the largest judgment ever obtained in an ERISA case prosecuted by the Secretary. This judgment supplemented an earlier settlement with the Pension Trust's trustees that restored \$3.7 million to the Pension Trust.

In connection with the appeals and cross-appeals taken from the judgments in favor of the Secretary in *Schmoutey* to the Ninth Circuit, the division filed appellate briefs on behalf of the Secretary, the last of which was filed on March 18, 1985. In addition, the division filed an *amicus curiae* brief on January 29, 1985, in the appeals to the Ninth Circuit taken by Morris A. Shenker and his companies from the district court judgment entered against them in favor of The Karsten Companies, as investment manager for the Pension Trust.

On September 3, 1985, the Ninth Circuit affirmed a summary judgment obtained by the Secretary in 1984 against Ben Schmoutey, one of the Pension Trust's former trustees. The Ninth Circuit held that the facts indisputably established that Schmoutey had breached his fiduciary duties in violation of ERISA sections 404(a)(1)(C), failure to diversify plan asset investment, and 406(a), using plan assets in prohibited transactions. The court also held that the district court's injunction against Schmoutey, restraining him for a period of five years from any activity whatsoever related to ERISA covered plans, was appropriate. With regard to the appeals involving the Shenker defendants, oral argument was originally scheduled for August 15, 1985, but was later postponed indefinitely pending settlement discussions.

In the bankruptcy proceedings brought by Shenker and one of his companies following the Secretary's judgment against them, *In re Shenker*, No. 84-00001(3) (Bankr. E.D. Mo.) and *In re I.J.K. Nevada, Inc.*, No. 84-00915(3) (Bankr. E.D. Mo.), the division continued to represent the Secretary in connection with his unsecured claim based on the judgment obtained in *Brock v. Schmoutey*. Upon analysis it was concluded that, in view of the amount of the secured claims and priority claims (which include a claim in the amount of approximately \$68 million filed by the Internal Revenue Service for unpaid income taxes dating back to 1963) and the apparently available bankruptcy estate assets, there was little prospect for meaningful recovery on the Secretary's unsecured claim. The division then undertook an examination of the claims of secured creditors and examined, as well, whether any such creditors might be susceptible to claims based on ERISA.

As a result of these efforts, the division succeeded, in March 1985, in achieving a negotiated settlement with Valley Bank of Nevada, which held the largest secured claim in both bankruptcy proceedings. The settlement required the bank to provide to the Pension Trust, through Karsten, a 50 percent interest in the bank's secured claims against the debtors. In addition, the Bank purchased from the Teamsters' Pension Fund, for \$5.31 million, its secured and unsecured claims against the debtors, and the Pension Trust received a 50 percent interest in these claims.

Following the settlement with the bank, the division continued to pursue adversarial actions in the bankruptcy proceedings, and the debtors ultimately offered to negotiate a resolution of the claims held by the Pension Trust and Valley Bank. These negotiations resulted in an agreement that, in its essential effect, would permit the Pension Trust and Valley Bank to immediately either be paid in full on all of their joint claims, or to have put up for sale at auction all of the collateral securing the claims. On July 24, 1985, the court entered an order implementing the settlement, subject to the consent of the Secretary.

At the close of the fiscal year, the Secretary was considering whether the settlement should be implemented. If implemented, the settlement will conclude all of the Secretary's litigation against the *Shenker* defendants, and the Pension Trust will recover from these defendants an amount that will exceed \$7 million.

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Office of Policy

During fiscal year 1985, the Office of Policy provided staff support for the Secretary's participation in the Cabinet Councils on both Domestic Policy and on Economic Policy.

The Office participated in various working groups dealing with interagency issues that affect the Department, and briefed the Secretary in preparation for Cabinet Council meetings. The Cabinet Councils discussed a diversity of topics, including immigration legislation, farm credit conditions and agricultural policy, pension policy, the new regulatory planning process implemented by Executive Order 12498, tax simplification, the Federal deposit insurance system, adjustment assistance for workers displaced by foreign competition, and a variety of Federal regulatory policies as they affected specific industries.

Program Analysis

The Office of Policy continued to provide support to the Administration's efforts to have Congress enact a Youth Employment Opportunity Wage (YEOW). YEOW would establish incentives for the private sector to create jobs and training positions for teens under 19 years of age. Though this legislation was not enacted during the fiscal year, considerable broad-based support for it has been achieved.

The Office of Policy participated in a Secretarial review of an Unemployment Insurance (U.I.) quality control proposal that was to have been implemented in July 1985. This program is designed to protect the integrity of benefit payments and revenue collections by measuring error rates, identifying sources of error and instituting corrective action. Although there is general agreement that such a program is essential to the UI system, the program developed for implementation in July 1985 was severely criticized, primarily by State representatives, for its failure to provide States with the flexibility to analyze problems and undertake corrective actions. As a result, Secretary Brock initiated a special review of the quality control issue, to ensure that the views of all interested parties are reflected in the type of system that is finally implemented. Although this review was not completed in fiscal 1985, it is expected to result in a UI quality control system that is based on a consensus of key design issues arrived at by representatives of States, unions and employer groups.

The methodology used by the Department to establish adverse effect wage rates for the H-2 program was also reviewed, with the participation of the Office of Policy. The review, which has continued into fiscal 1986, is expected to result in a change in the methodology for the purpose of utilizing new USDA survey data to calculate adverse effect wage rates for farm workers.

Regulatory Economics

During the year, the Policy Review Coordinating Committee (PRCC) focused on improving the Department's management of regulations in accordance with Executive Order 12498. This resulted in the first comprehensive plan for the Department of major regulatory actions that were to be undertaken in the year starting April 1, 1985. After extensive review by the PRCC and OMB, this plan was incorporated into the overall President's regulatory program for the year.

In terms of specific items that were reviewed by the PRCC during the year, the following are among the most important:

1. MSHA—proposed standards for (a) gassy underground metal and nonmetal mines; (b) radiation hazards; (c) criteria for establishing a pattern of violations by mine operators; and (d) roof supports for underground coal mines.
2. ETA—new or revised regulations concerning (a) DOL segment of the income and eligibility verification system required by the Deficit Reduction Act; (b) alien workers; (c) Trade Adjustment Assistance; and (d) the Senior Community Service Employment Program.
3. ESA—regulations (a) for the implementation of the 1984 amendments to the Longshore and Harbor Workers' Compensation Act; (b) to reflect the Supreme Court decision in the Garcia case under the FLSA; (c) to consider revising the salary and duties tests under the FLSA (Part 541); and (d) with OASVET, a proposal for Federal contractor reporting of veterans' employment
4. OSHA—proposals for standards in the areas of (a) concrete and masonry construction; (b) benzene; (c) cotton dust; (d) pressure sensing device initiation for mechanical power presses; and (e) recordkeeping for testing and maintenance checks.

The Office worked closely with the various agencies of the Department, especially OSHA, MSHA, and ESA, to ensure that economic and other needed analyses were performed and met the requirements of Regulatory Flexibility Act, E.O. 12291, etc. The

Office also worked closely with the Solicitor and OMB in developing and defending the regulatory actions proposed by the Department.

Finally, the Office participated with other parts of the Department in a number of efforts designed to improve the Department's performance, including the task forces on the handling of black lung claims, the improvement of the process for issuing regulations, and the evaluation of the impact of OFCCP, and such interdepartmental groups as the Interagency Committee on Standards Policy and the Committee on Interagency Radiation Research and Policy Coordination.

Economic Analysis

The Office of Policy undertook a number of analytical and informational papers and reports pertaining to collective bargaining and labor-management related issues, structural unemployment and displaced workers and numerous other economic or employment related topics. These included a report to Congress on the *Causes and Remedies for Displacement of Steel Workers* and a report summarizing the major issues and dimensions of the dislocated worker problems stemming from plant closings in the United States. A report was also prepared on the President's tax reform proposals, analyzing both the major elements of the tax package and the impact of the proposals on Department programs.

The Office of Policy prepared economic updates, and provided analytical interpretation and projections of key economic data to senior Department and Government officials. Analysis of labor force, compensation, and price data originating in the Bureau of Labor Statistics was emphasized; however, the full range of real and financial economic data were monitored. This broad coverage helped facilitate in-depth analysis of timely economic issues, such as the strength and durability of the economic recovery and international trade flows; it allowed for a diversity of impact analyses prepared under alternative policy scenarios.

The Office of Policy provided analyses on individual industries and demographic sectors within the economy in conjunction with the monitoring of major macroeconomic activity. The capability to monitor a broad range of economic activity was especially useful in examining the recovery's impact on specific sectors and industries; in analyzing such issues as international trade, structural unemployment, displaced workers, and job training requirements; and in projecting the economic impact of potential strike activity.

Research

In fiscal 1985, the Office of Research and Technical Support supervised the successful completion of several large contract research projects. Among the most significant were the following:

- A project on minority wages and employment which examines and explains trends in black-white income.
- A set of three empirical examinations of the transition in labor force status and the associated wage and occupational changes.
- An analysis of job change patterns among young men as they enter the labor market and move toward permanent employment arrangements.
- A study of training, its sensitivity to technological change and labor market conditions, and its effects on subsequent earnings level and employment.
- A study of the relationship between local (State) and national labor market patterns and of the causes and consequences of differences across local areas.
- Two projects on compensating wage differentials, one empirically studying wage increments associated with increased risks of unemployment or reduced employment, and the other examining wage differentials for job health hazards.

In addition, in fiscal 1985 new contract research projects were undertaken, obligating nearly \$1.4 million. Research projects undertaken address primarily labor market issues, employment and training, and unemployment insurance. Two studies together will examine the impact of technological change on employment opportunities, productivity, and the quality of worklife; a demonstration project will provide training for disadvantaged school dropouts, and a large unemployment insurance project will examine the effects of work search requirements on payment-error rates as well as on the job search activities and job-finding success of claimants.

Office of the Assistant Secretary for Administration and Management

Throughout fiscal 1985 the Office of the Assistant Secretary for Administration and Management (OASAM) continued to emphasize increased administrative efficiency. Cost reduction and service improvement initiatives were pursued aggressively. Reform '85, built on the successes of Reform '84, helped achieve, through management improvement initiatives, dollar and full-time equivalent savings necessary to meet mandated budget reductions. Particularly significant were accomplishments in telecommunications and space.

Departmental telecommunications and space expenses continued to be reduced during fiscal 1985. For example, improved administration of the Federal Telecommunications System contributed to a \$2.7 million, or 26 percent reduction from fiscal 1984, \$1.3 million below GSA's fiscal 1985 projections.

The Department also released 225,000 square feet of space for a savings of \$2.6 million. OASAM further supported the Department's initiative to reduce space costs through a particularly noteworthy consolidated procurement of 2,400 systems work stations. As a result of this pioneer effort, the Department was able to obtain systems furniture 67 percent below retail market price. When it is installed during fiscal 1986, it will support further space reduction while providing an attractive, efficient and safe work environment.

Regarding employee safety, the Department, through OASAM leadership, continued making significant progress toward its goal of insuring a safe and healthful workplace for all its employees. Job Corps continued to be the area with the greatest potential for safety and health problems owing to the type of trades (mostly construction) being trained for, the large number of corpsmembers receiving training each year (exposure), and the skill level of those entering the program. Constant vigilance and increased emphasis on implementation of the DOL Safety and Health Program were required in order to ensure the safety and health of all corpsmembers.

OASAM also continued to provide health services to DOL employees which included, but were not limited to, treatment of illnesses and injuries, physician prescribed treatments, physical examinations, monitoring of blood pressure and diabetes, educational

programs on stress, high blood pressure, cancer, etc. In order to respond more effectively to both employee and management needs in the areas of alcoholism, drug abuse, emotional/mental, family, legal, and other problems, the Employee Counseling Services Program continued to broaden in scope.

OASAM also participated in negotiations with the Government Printing Office whereby wage determinations under the Davis Bacon Act and related legislation will be made available to interested parties through the Superintendent of Documents for a fee. Previously, these materials were published in the *Federal Register*. Savings to the Department are estimated to be \$280,000 annually.

Another cost-saving initiative to which significant attention was devoted was the installation and implementation of digital forms design and laser printing equipment by OASAM's Office of Printing and Reproduction Management. These systems reduce the costs for storage and distribution of forms as well as provide a capability for "on demand" printing. Elimination of stocks of obsolete forms will be an additional benefit. The technology enables a forms designer to create or modify a form layout on a microcomputer and then produce the exact number required with a laser printer.

Resourcefulness and willingness of staff to carry even heavier responsibilities enabled the DOL Library to maintain service in the face of increased user demand for increasingly complex information services, while reducing administrative overhead. New methods and patterns of delivering services were sought and implemented. In some instances, staff were assisted by technology. Several experts in the preservation field gave advice on treatment options for deteriorating books. A labor historian/curator volunteered to evaluate the selections for the rare book collection. Collection security measures continued; detection tapes were inserted in all new purchases and in selected other publications.

In response to the Administration's initiatives to effect savings and/or cost avoidance through better controls on administrative costs, the Department of Labor established the National Capital Service Center (NCSC) in July 1984 to provide centralized administrative support services in four key areas—personnel, procurement, finance, and facilities management—to approximately 3,000 DOL employees in some 28 organizations. This action was accomplished and most problems overcome in an expeditious manner. The newly established Center continued to ensure the timely delivery of building and other services and an on-going series of energy cost-reduction programs was instituted. An Energy Management Information System (EMIS) and a program designed to reduce energy consumption resulted in cost savings and/or cost avoidances

which were incorporated as standard operating procedures. Computerized data on consumption and expenditures, as well as the information necessary for planning purposes for fiscal 1986 and beyond are provided by the EMIS.

Other NCSC accomplishments in fiscal 1985 include implementation of improved operating procedures and advanced equipment in the area of mail and messenger service, an automated personnel action tracking system, an automated work order tracking and information system, a weekly financial activities report, and a small purchases system. Future initiatives will further expand the concept of automated systems to assist NCSC employees in doing their work accurately and in good time.

Continuing efforts were made by OASAM to improve the Department's overall procurement management. Initial steps were taken to design a training strategy to increase the competency of the staff involved in purchasing services and supplies through our procurement structure; cost analysis support was increased over past levels; and special emphasis was placed on introducing staff to the new requirements of the Competition in Contracting Act through a nationwide training effort. Other activities included standardizing the administrative requirements for Letter of Credit, audit, closeout, and improving the management of indirect costs application in Department of Labor programs.

A major accomplishment in fiscal 1985 was the continued increase in the Department's use of competitive procurement methods. For the first 6 months of the fiscal year, 85 percent of the Department's actions were competitive. This is 15 percentage points higher than in fiscal 1984, ranking us near the top of all of the Federal agencies in this indicator. Our internal review procedures, spearheaded by the Procurement Review Board, have been a key factor in this development.

During fiscal 1985, in the area of personnel management, OASAM continued its emphasis on streamlining the operation of the personnel system. A significant accomplishment was the conversion of DOL personnel offices to PERMIS, the Department's version of the Air Force automated personnel system. Full implementation is scheduled for October 1985. PERMIS is part of the Reform '88 initiative to automate and enhance the efficiency of personnel operations. When operational the system will provide the ability to access the PERMIS data base and produce administrative and management reports overnight; track SF-52's; track position candidates by sex, minority group and recruiting source; identify DOL employees who are entitled to priority consideration; and store training information on DOL employees.

In order to enhance coordination between the personnel and labor relations functions, OASAM completed a reorganization which combined the Directorate of Personnel Management and the Office of Labor Management Relations. Following reviews and analyses of major collective bargaining agreements by Management Bargaining Preparation Committees, the Local 12 collective bargaining agreement was extended for one year until May 1986. The other agreement, between the Department and the National Council of Field Labor Locals (NCFLL), was the subject of informal negotiations. These led to extension of the agreement through mid-August 1987, and amendment of three articles. The most significant change encompassed extensive revision of the merit staffing plan affecting the bargaining unit represented by the NCFLL. Changes have resulted in savings of time, staff hours and cost of its administration. In addition, the merit staffing plan for nonbargaining unit employees was also revised with similar results.

The Department continued its resources-sharing efforts in executive development with the Departments of Health and Human Services, Treasury, Army, and Interior. A greater number of forums for executives were offered during this period, and both the average participation and participant evaluations of program quality were raised. In addition, the average cost per executive per session was significantly reduced.

Emphasis also continued on workforce analysis and planning. Agency-specific workforce profiles were prepared, including 3, 5, and 10 years retirement projections, and OASAM continued to encourage filling the DOL career pipeline by using a variety of means to recruit high quality talent. In order to assist supervisors in this regard, a "Supervisor's Quick Reference to Hiring Students, Faculty, and Temporaries" was published.

A feature personnel management accomplishment during fiscal 1985 was the orderly implementation of a number of newer classification standards issued by the Office of Personnel Management in the Factor Evaluation System format. This fiscal 1985 activity saw the final phase of work completed on the implementation of standards covering over 10,000 positions in the Department.

Several personnel administration programs were strengthened to improve internal controls and to improve service to employees. Additional guidance and instructions were issued to personnel offices on unemployment insurance and separations/retirement processing, including checklists and fact sheets for employees with emphasis on improving procedures, processing time, and personnel/payroll office communications.

To improve the technical expertise of the Department's personnel staffs, 154 personnel staff members from throughout the

Department attended a series of training courses provided by OASAM's Personnel Training Center. These courses included such subjects as Position Classification/Position Management, PERMIS, Labor Management Relations, Grade and Pay Retention, Pay Setting, and Employee Relations and Discipline.

Noteworthy in the financial management area was the Department of Labor's cash management program which will achieve annual savings estimated at nearly \$25 million. The savings result from cash management improvements initiated since fiscal 1983 and include the establishment of electronic fund transfers of grant payments in the Treasury Financial Communications System for the Department's employment and training, statistical, and occupational safety and health programs; use of lockbox operations for receipt of monies in three agencies of the Department; increased participation in direct deposit of payroll; and electronic transfer of disbursements for major procurements. As the result of these improvements, the Department estimates it exceeded Department of Treasury cash management goals of \$14 million by nearly 80 percent in fiscal 1985.

As of September 30, 1985, after a comprehensive review process, the Methods of Administration of 23 States and territories have been certified by OASAM's Office of Civil Rights (OCR) as sufficient to provide reasonable guarantee of recipient and subrecipient compliance with the equal opportunity and non-discrimination requirements applicable to the Job Training Partnership Act.

OASAM assembled a workgroup consisting of National and Regional Office staff to develop a comprehensive training plan for OCR staff involved in writing determinations on complaints investigated by OCR staff. Two sessions of three days each were conducted to assist staff in making more consistent determinations with adequate supporting documents and information. The highly interactive training was designed and presented by the workgroup which conducted a detailed analysis of prior determinations issued by OCR. Participants were provided with a proposed job aid in the form of a detailed checklist to guide the preparation and review of determinations. During fiscal 1986, OCR will closely monitor the determinations to ensure their validity and consistency.

Another significant reorganization in OASAM during fiscal 1985 was effected with the merger of information technology and information management functions into a newly established Directorate of Information Resources Management (DIRM). The Department's overall automated data processing (ADP) strategy was reexamined and revised to strengthen the management of the use of

information technology and renew the Department's commitment to a user-oriented management approach to ADP. That approach has to be balanced with broader departmental considerations such as minimizing costs, sharing of information, and increasing technical compatibility.

During the year, DIRM developed and disseminated a comprehensive inventory of existing ADP systems and associated equipment. Additionally, an ADP planning base was established to include Agency Five-year Technical Plans, ADP Financial Plans, and Annual Advance Procurement Plans. Monthly meetings are being held with agency ADP managers to provide a forum for interagency communication and cooperation. All of these actions reinforce the Department's ADP policies and the oversight of agency ADP activities.

DIRM also played an important role in providing an enhanced environment to support the personnel functions of the Department. A major installation of ADP and telecommunications facilities to operate PERMIS in support of both the national and regional offices was completed under an Interagency Agreement with Oak Ridge, Tennessee. Additionally, DIRM embarked on two major initiatives tailored to explore ways to reduce central processing unit time at the host computer and to optimize use of the minicomputers on hand.

Regarding information collections, DIRM provided the necessary leadership as the Department reduced the paperwork burden imposed on the public again this year by over 3 percent from fiscal 1984 to fiscal 1985. This reduction of over 2 million hours fell largely in the Mine Safety and Health Administration area.

In fiscal 1984, the Department tested state-of-the-art electronic postage metering equipment in three regional offices to assess the effects of direct accountability of mail costs. The results were positive; the equipment easily paid for itself in reduced mailing costs in less than 1 year. As a result of these successful pilots, metering systems were installed in the Frances Perkins Building mail room; the Chicago Regional Office; and the MSHA Academy in Beckley, WV. Each location is unique because of workload, organization and service expectations and has required special approaches. Preliminary evaluations are positive and additional sites are expected to become operational next year.

Under DIRM leadership OMB's A-76 Productivity Improvement Program was given greater emphasis in the Department. The purpose of the program is to achieve economy and enhance productivity in the performance of commercial activities.

Regional OASAM components continued to make significant contributions toward cost reduction and greater managerial efficiency in regional agencies. Areas receiving attention during fiscal 1985 included internal controls, productivity improvement, region-wide emphasis on reductions in space and telecommunication utilization, and participation in the implementation of several automated systems, such as PERMIS, Procurement Control and Accountability System, and the integration and utilization of automated data processing capabilities into each OASAM functional area.

For example, the Atlanta OASAM developed and installed systems to track the issuance of government drivers' licenses and, each month, automatically produce renewal letters to those individuals whose licenses are about to expire; produce mailing labels to be used for vacancy announcements and other OASAM issuances; and track official time used by union officials. The Seattle OASAM had the lead in developing a Cost Determination Reporting System which will be operational in fiscal 1986.

Financial management personnel in the Kansas City region completed a departmentwide Risk Assessment and Life Cycle Review of the interactive payroll maintenance system (IPMS). This type of project had never before been accomplished within the Labor Department and made it possible for OMB A-71, "Risk Analysis," requirements for sensitive computer-based applications to be met for the IPMS. The report also contained recommendations designed to strengthen internal control, improve the Operational Effectiveness Review and the Risk Assessment Programs, and assure consideration of decentralized payroll office's needs and recommendations during future phases of the Department's payroll modernization effort.

Overall, fiscal 1985 was a year that required several abrupt changes in direction, wholehearted participation in the "computer age," and a continuation of a desire to do more with less by "working smarter." Increased productivity efforts involved greater concentration on cross-training of limited staff, extensive use of the word processing systems for formatting and storing of recurring reports and projects, and automation of regional data bases.

Throughout the year OASAM emphasized providing timely and quality services to Department of Labor components at reduced administrative costs. Management improvement goals and cost reductions were accomplished with the initiative and efforts of a dedicated staff in both the national and field offices of OASAM.

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Bureau of International Labor Affairs

In fiscal 1985 the Bureau of International Labor Affairs (ILAB) activities addressed international issues relating to the growing trade imbalance, immigration, technology transfers, foreign labor, and the impact of these problems on the American wage earner. ILAB's most significant achievements during fiscal 1985 were as follows:

1. Foreign Relations

- Entered into a new, cooperative agreement with the Swedish Ministry of Labor, coordinated cooperative programs and information exchanges with Japanese and Australian labor ministries, and participated in top level discussions with Japanese and Israeli labor ministries.
- Monitored and assessed Caribbean Basin Initiative (CBI) countries' labor practices and prepared for Congressional review the first annual report mandated in the Caribbean Economic Recovery Act (CBERA).
- Entered the second phase of the technical assistance project with Saudi Arabia; carried forward a major project in the Bahamas; and provided advisory services to Belize, Costa Rica, Grenada, Jamaica, Argentina, Paraguay, Egypt, Liberia, and Zimbabwe.
- Advanced the application and transfer of U.S. technologies to human resource development abroad through use of the Center for Advanced Learning Systems.

2. International Economic Affairs

- Provided technical staff and research support to the inter-agency development of the President's trade policy action plan to improve the trade balance and counter protectionist pressure from the Congress.
- Participated in interagency policy formulation and in negotiations, resulting in a signed free trade agreement with Israel.
- Actively assisted the implementation of the Administration's steel industry program, resulting in the negotiation of voluntary export restraint agreements and a plan for assisting dislocated steel workers.
- Submitted to Congress reports on foreign industrial targeting and on the U.S. employment effects of the first year of the President's Caribbean Basin Initiative.
- Participated in interagency policy developments and negotiations addressing such issues as the proposed new

round of multilateral trade negotiations, the trade imbalance with Japan, trade in high technology goods and services, trade and investment issues with Mexico and Canada and U.S. textile imports.

- Played a central role in initial implementation of worker rights criteria of U.S. Generalized System of Preferences.
- Served as a principal member of a U.S. delegation that negotiated three new bilateral textile agreements and renewal of several others.
- Chaired the Steel Advisory Committee's Subcommittee on Employment, Productivity and Adjustment Issues.
- Worked actively with the Administration to effect enactment of immigration reform and control legislation.

3 International Organizations

- Blocked Soviet efforts to dismantle the International Labor Organization's (ILO) human rights supervisory machinery.
- Through intensive lobbying efforts, motivated ILO to adopt a program budget that was acceptable to the U.S. Government for the first time since 1969.
- Represented the U.S. Government at meetings of the Organization for Economic Cooperation and Development's (OECD) Manpower and Social Affairs Committee.
- Redirected the activities of both the ILO and OECD to focus more on issues of special relevance to the United States.

Labor Ministries/Information Exchanges

In September 1985 Secretary Brock met with a Japanese delegation on a "Labor Diplomacy" mission to exchange views on current labor issues, discuss the impact of the increased industrial use of microelectronics on labor, and review relations between the two countries with respect to labor affairs. Labor Minister Toshio Yamaguchi led the delegation, which consisted of the heads of Japan's four labor centers, representatives of major employer organizations and Labor Ministry staff.

During fiscal 1985 the Labor Department entered into an agreement with the Swedish Ministry of Labor for a cooperative Department-to-Ministry program dealing with occupational safety and health. The agreement calls for periodic joint committee meetings to discuss current issues, exchange information and share results of studies and programs.

Special cooperative programs coordinated by ILAB continued between the Department and the Japanese Ministry of Labor (MOL) and the Australian Department of Employment and Industrial Relations (DEIR). The Japanese program included: the publication in

Japanese and English of the *Japan-U.S. Comparative Study on Employment Adjustment*; publication in the *Monthly Labor Review* of a study entitled "The Relationship Between Technical Innovation and Labor"; ILAB's presentation of a paper on technology and employment in the United States at the International Symposium on Microelectronics and Labor held in Tokyo; and the ongoing exchange of test results measuring the toxicity of industrial chemicals with the MOL's Bioassay Laboratory.

The Bureau's cooperative program with Australia included: a 1-year work training program with BLS for a DEIR staff member; seminars on Labor Statistics and Methodology and Techniques of Employment Projections and Productivity Measurement, given in Australia by BLS Commissioner Norwood and two associate commissioners; an agreement for a long-term work-study program with OSHA for the Assistant Secretary of the National Occupational Safety and Health Commission; and the exchange of technical papers on labor-management relations.

Labor Department officials met with the Director General of the Israeli Ministry of Labor and Social Affairs for a review of ongoing activities and those planned under the U.S.-Israeli cooperative labor program. The Bureau of Labor-Management Relations and Cooperative Programs and the Occupational Safety and Health agency continued to exchange materials with Israeli counterparts.

In July 1985, ILAB assisted the President's Committee on Employment of the Handicapped in activating its International Committee which was formed earlier in the year to work with foreign rehabilitation and labor experts for the exchange of legislative and program information. Associate Deputy Under Secretary James F. Taylor chaired an interagency meeting to acquaint representatives from State, AID, USIA, and Peace Corps with the goals and personnel of the International Committee.

American Labor Attachés

During fiscal 1985 the Departments of Labor and State held conferences in Mexico City for Foreign Service labor attachés stationed in Latin America and the Caribbean, and in New Delhi for labor officers assigned in Asia and Africa. The regional workshops held during the conferences developed labor policy and program recommendations for technical assistance, labor exchange, and labor information.

ILAB prepared labor trends reports written by Embassy officials on over 60 countries for distribution to the public through

electronic databases. The Bureau also participated in the Foreign Service (FS) promotion panels and in FS management through the Board of the Foreign Service and the Board of Examiners.

Caribbean Basin Initiative

In addition to monitoring the 21 CBI countries' compliance with the labor criterion contained in the CBI legislation, ILAB continued to provide assessments of labor conditions and institutions in CBI countries to interested parties in both public and private sectors. Produced by ILAB at the request of the CBI task force. *Country Labor Profiles* were made available to representatives of businesses and other institutions.

ILAB prepared and Secretary Brock submitted the first annual report mandated in section 216 of the Caribbean Basin Economic Recovery Act (CBERA). The report quantified the domestic effects of CBI on U.S. labor; a major conclusion was that imports from CBERA beneficiaries did not appear to have had an adverse effect on or constituted any threat to U.S. employment.

ILAB's technical assistance activities in work force development extended to various CBI countries in fiscal 1985. The Bureau consulted with the Costa Rican Government regarding the development of a National Training Institute. ILAB planned for the implementation of a program in labor-management relations for Jamaica in fiscal 1986. With the support of the CBI Task Force, the Bureau formulated proposals to help upgrade private sector manpower skills in many other CBI countries through on-the-job training programs.

Other International Technical Cooperation

The World Bank-funded technical cooperation project for upgrading the Vocational Technical Training System of the Bahamas provides assistance to the Ministry of Education, Ministry of Health, College of the Bahamas, Hotel Training College and the National Training Center.

ILAB directed major efforts in fiscal 85 toward achieving the goal of upgrading the College of the Bahamas to a 4-year institution; new curricula were written, numerous teacher in-service workshops were conducted, and advisory services in testing and evaluation were provided to enable the Bahamians to grant their students a 2-year college certificate that is transferable to U.S. institutions. The Bureau met its fiscal 1985 objective of strengthening skills in the Bahamian tourist industry by providing training for participants from the Hotel Training College, which involved

study in the United States as well as participation in a cooperative education program with the Bahamian hotel industry. Many students were trained in health care services and entrepreneurship in keeping with the Bahamian Government's priorities. Additional education was provided in the areas of career guidance and placement, communication, distance learning, admissions and records, home economics, math, sciences, and industrial technologies. ILAB recruited 15 short-term TDY specialist/advisers in business and computer science, health care, human resource data base, industrial technologies and hotel training, and two long-term advisers in cooperative education and testing/evaluation. A 1-year extension of the agreement, to begin in June 1986, has been approved by the World Bank and the Bahamian Government.

The Saudi Arabian Vocational Training and Construction Project (VOTRAKON's \$1 billion Phase 1 agreement), initiated in 1976, was established to help Saudi Arabia expand and modernize its kingdomwide vocational training system, and involved comprehensive training as well as design and construction of training and housing facilities. In 1985 ILAB advisers worked with Saudi counterparts to identify industrial sectors, classify jobs within them, develop job standards, help companies understand and apply for training subsidies, orient and train industrial training officers and obtain training materials.

Phase II of the VOTRAKON project became effective on July 1, 1985, extending the agreement for an additional 5 years. Its principal goal is to assist the Saudis in implementing the programs initiated in Phase I. A major portion of the program will continue to be directed toward the industrial sector and on-the-job training. Saudi Arabia approved an \$8 million budget for fiscal 1986 for Labor Department-related operating funds. Under Phase II of the Project, with Labor Department staff at a reduced level of 14 advisers, activities will focus on eight closely related and interwoven areas: project direction and management; planning, research and development; curriculum development; curriculum revision and implementation; administration, system development and guidance; on-the-job training; teacher training, overseas training, and information retrieval; and media support. Among planned activities, by far the most significant and immediate is the move into the recently completed Instructor Training Institute, a large complex designed to provide instruction and housing for a large number of resident and commuting students from throughout the kingdom, as well as facilities for the development and printing of curriculum materials in its Instructional Media Development Center. A second highly significant activity will be the installation of curriculum materials developed during the earlier stage of

the Project. This requires intensive orientation of training center staffs, provision of all needed equipment and supplies, and the conversion of training programs from traditional methods to those which support competency based, individualized and mediated instruction.

ILAB continued to provide technical cooperation services to other developing countries under funding provided by the Agency for International Development (AID). Short-term technical assistance services were provided to Belize, Egypt, and Liberia. The International Development Cooperation Agency's (IDCA) Trade Development Program sponsored advisers in Argentina and Paraguay, and ILAB performed a diagnostic mission in Zimbabwe at the request of the Bureau for Private Enterprise. DOL furnished (through its own staff) AID-funded long-term technical assistance to Egypt in labor market information, vocational education and manpower planning. Travels of technical assistance staff also included brief diagnostic visits to Haiti, Mexico, Portugal, Jordan, Cameroon, Ivory Coast, Kenya, Nigeria, Rwanda, and Somalia.

During fiscal 1985, ILAB sent a delegation to the International Conference of Labor Ministers which selected Washington, D. C. as its 1988 conference site. At the CINTERFOR conference the Bureau consulted with Latin American delegates interested in work force development.

Center for Advanced Learning Systems

During fiscal 1985 the Center for Advanced Learning Systems (CALS) provided consultation in labor force development to approximately 80 officials from 40 countries. The Center provided advice on the transfer of technologies applicable to human resource development (global communications microprocessor-based technologies such as microcomputers, interactive videodisc, random access audio, etc.), in the areas of competency-based training, vocational information and guidance systems, and new labor market analysis techniques.

The Bureau discussed plans with the Costa Rican Government for a Center for Labor Force Development, in which the Bureau would forge a permanent link with the Costa Rican Center, thereby forming a pipeline for U.S. products and technologies. In addition, as the result of discussions held with Argentina and Portugal, US firms were included on Argentina's bidding list for equipment for technical schools, and on Portugal's list for equipment and technical assistance.

International Visitors

During fiscal 1985 ILAB arranged AID-funded programs for 132 trade union officials and 21 other AID visitors, as well as programs for 27 participants who were financed by their home countries.

Trade Union Directories

The Bureau completed 155 and began to update 15 country chapters in its *Directory of Foreign Labor Organizations*. For each of these countries the Directory includes all major foreign labor federations, affiliates and other independent unions, listing their officers, and describing their membership and jurisdiction.

Trade Policy

As the Administration and Congress sought to address international economic issues resulting from the growing U.S. trade imbalance, ILAB:

- Assisted in the interagency development of the President's trade policy action plan to improve the trade balance and to counter mounting protectionist pressure by the Congress.
- Contributed to the development of U.S. policy on trade in high technology goods and services, which were the subject of discussion at the Venice Conference on Technological Development and Employment, and in talks with the European community and Japan.
- Participated in negotiations on a free trade arrangement with Israel resulting in a signed agreement directing that each country's tariff and other barriers on industrial and agricultural products be completely phased out by 1995.
- Played a central role in the development of procedures implementing the worker rights criteria of the U.S. Generalized System of Preferences as mandated by the Trade and Tariff Act of 1974.
- Participated in interagency deliberations for mounting a new round of multilateral trade negotiations.
- Addressed the trade imbalance with Japan by participating in consultations under the termination provisions of the U.S.-Japanese Nippon Telephone and Telegraph Agreement, initiated to allow U.S. companies greater participation in NTT's telecommunications equipment purchases.

- Prepared a report to Congress on foreign industrial targeting whereby countries select certain industries for special government aid, such as subsidies or trade restrictions, to promote their international competitiveness.
- Worked toward furthering U.S. policy goals on bilateral trade issues, including participation in discussions with Mexico on a general framework agreement covering our trade and investment relations, and with Canada regarding a possible U.S.-Canada free trade area.
- Actively assisted the implementation of the Administration's steel industry program. ILAB collaborated with other DOL agencies in developing a plan to assist dislocated steel workers as requested by the President and Congress under section 807 of the Trade and Tariff Act of 1984. The Bureau also participated on interagency teams which negotiated over a dozen voluntary export restraint agreements and negotiated an arrangement with the European Economic Community to restrict shipments of previously unrestricted steel products.
- Participated in meetings of the OECD Steel Committee focusing on the development of long-term solutions to the problems of international trade in steel.
- Continued as a principal member of U.S. delegations negotiating and renegotiating bilateral textile agreements within the Multi-Fiber Arrangement's framework. Three new agreements were concluded. ILAB shared interagency efforts to carry out the President's commitment to relate growth in textile and apparel imports to growth in the U.S. industry, which involved approximately 150 consultations with 37 supplying countries (in accordance with the White House criteria of December 16, 1983).
- Provided employment data and participated in interagency deliberations concerning the copper industry pursuant to preparation of the President's report to the Congress in accordance with section 247C(2) of the Trade and Tariff Act of 1984.
- Participated in extensive interagency deliberations pursuant to advising the President regarding restrictions on nonrubber footwear imports under provisions of section 201 of the Trade Act of 1974.
- Participated in interagency deliberations on the resolution of trade issues with Japan involving Japanese restrictions on leather and leather footwear.

Advisory Committees

During fiscal 1985 the Bureau continued to provide staff support to the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), which advises ILAB and the Office of the U.S. Trade Representative on trade issues. ILAB also participated in the Steel Advisory Committee (SAC) (composed of steel companies' management, organized labor, and the U.S. Government), which successfully concluded its work and made recommendations regarding domestic steel industry problems affected by trade laws and policies, U.S. antitrust laws, U.S. tax laws, capital formation, investment and modernization, and employment, productivity and community issues.

ILAB chaired the SAC Subcommittee on Employment, Productivity and Adjustment Issues and participated in activities of other SAC subcommittees on the state of the industry, trade issues, industry rationalization, and capital formation. In November 1984, the SAC approved recommendations from the committee and forwarded them to the Cabinet Council on Commerce and Trade for consideration. Some significant recommendations included support for broader use of labor-management participation teams in industry as a means of increasing productivity, ways to reduce employment costs, and support for retraining initiatives to assist dislocated workers.

Immigration

ILAB continued in fiscal 1985 to participate in the formulation of U.S. immigration and refugee policy and the coordination of immigration policy development within the Labor Department, as well as providing technical assistance or analysis on labor-related immigration issues to Congress, senior Labor Department policy-makers, other government agencies, and others. ILAB worked actively with the Administration to achieve enactment of immigration reform and control legislation. The Bureau produced a study titled "Female Predominance in Immigration to the United States since 1930: A First Look," published in the *International Migration Review* (Winter, 1984). ILAB immigration staff also expanded their unique computerized data bank on immigrants to the United States to include Immigration and Naturalization Service data for fiscal 1980-84 arriving immigrants, and 1980 U.S. Census data on the foreign-born population.

ILAB took the lead role for the U.S. Government in international organizations on issues relating to international labor flows, serving as the U.S. Government's representative to the OECD Working Party on Migration. The Bureau planned and coordinated

the U.S. contributions and participation in the OECD Conference on the future of Migration scheduled for February 1986. ILAB staff served on the U.S. delegation to the U.N. General Assembly Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, and participated in a panel on "Immigration Enforcement: Effects on Jobs and Businesses," at the Center for Migration Studies' Eighth Annual National Legal Conference on Immigration and Refugee Policy.

Foreign Economic Research

The efforts of ILAB's foreign economic program to determine the effects of foreign economic developments on the earnings and employment of U.S. workers involved quantitative analyses of policies affecting international trade, investment and technology transfer, and immigration. In addition to the studies already mentioned in this report, other research undertaken in fiscal 1985 includes: (1) a study of the trade and employment effects of the proposed U.S.-Israel free trade area; (2) an evaluation of alternative product and country graduation proposals for renewal of the Generalized System of Preferences; (3) an analysis of the U.S. employment effects of eliminating the Manufacturing Clause of the U.S. Copyright Law; and (4) an analysis of various remedies for certain trade sensitive industries.

International Organizations

ILAB's participation in international organizations in fiscal 1985 focused primarily on the International Labor Organization (ILO) and the Organization for Economic Cooperation and Development (OECD). The Bureau guided U.S. participation in the ILO in coordination with Labor Department agencies, other U.S. Government agencies, U.S. labor unions, and U.S. businesses. The President's Committee on the ILO, chaired by Secretary Brock, along with its two subgroups (the working-level Consultative Group and the Tripartite Advisory Panel on International Labor Standards) concentrated on preserving the ILO's machinery for the supervision of international labor standards, with particular attention devoted to human rights concerns. At the 1985 ILO conference, ILAB effectively lobbied with government, worker, and employer delegates to ensure defeat of a major Soviet initiative to dismantle this process.

The Committee further sought to promote U.S. priorities and cost-effectiveness in ILO program activities. This intensive effort

led to the attainment of a compromise budget level for the ILO's 1986-87 program which the U.S. Government was able to approve for the first time since 1969. ILAB also fostered for the first time within the IMEC group of major donors a commitment to embark on a systematic and coordinated evaluation of ILO technical activity, beginning with a review of the ILO's technical cooperation programs and procedures. The Bureau continued to improve the quality of programming services for ILO fellows by achieving a modest increase in the number coming to the United States. ILAB also strengthened efforts to increase the number of U.S. citizens hired by the ILO both in Secretariat and field positions by assigning specific staff to the recruitment function, consulting with the ILO's Washington Branch Office to define a carefully coordinated outreach strategy to identify appropriate U.S. candidates, and initiating discussions with high level ILO officials to achieve increased hiring of candidates identified through this new effort.

Other emphases of the Committee included discouraging ILO activities considered harmful to U.S. interests and increasing the use of private sector resources in the ILO. Concerning the latter, ILAB initiated and coordinated private sector activities in connection with ILO meetings on textiles, inland transport, and salaried employees and professional workers, which highlighted the U.S. commitment to tripartism within the free enterprise system.

ILAB also represented the U.S. Government in meetings of the OECD's Manpower and Social Affairs Committee (MSAC) and coordinated participation in its subsidiary bodies. The Bureau's participation in the OECD focused on subjects such as employment policy, industrial relations, employment and unemployment statistics, migration, women in the economy, social policy, and initiatives for local employment.

Finally, during fiscal 1985, ILAB established a closer working relationship and strengthened information exchanges between the Department, other governmental agencies, and the OECD. The Bureau successfully redirected the work of the Employment Working Party so that it now examines employment policy issues such as structural unemployment, labor market flexibility, and job creation. In addition, the Bureau helped reestablish the Industrial Relations Working Party so that it now focuses on issues of particular interest to the United States, such as the introduction of new technologies into the workplace and worker-employer cooperative efforts to increase productivity. ILAB assisted in the planning and implementation of OECD comparative studies on industrial restructuring, new technologies, and human resource development in the automobile industry and will participate in another study on the

role of large firms in job creation. The Bureau also initiated planning for an OECD Labor Ministerial in late 1986 which will discuss technological change and the future of work, manpower development and adaptability, and the functioning of the labor market.

Women's Bureau

On June 5, 1985, the Women's Bureau marked the 65th anniversary of its establishment under Public Law No. 259, 66th Congress. From its early days of field surveys of women's working conditions and the laborious collection of data on wages and leading occupations, the Bureau has grown in influence and scope. In fiscal year 1985, the Bureau continued to expand its information base in order to respond more readily to the ever changing needs of women in the Nation's work force.

At national headquarters and in the 10 regional offices, Bureau staff worked cooperatively with women's organizations and commissions for women, the private sector, employers, unions, employment program operators, educational and social service agencies, and government at all levels.

Among the activities of the fiscal year were a series of workshops targeted to the needs of women aged 35 to 50, entering or reentering the labor market, or making a career change; a national conference on a school-to-work transition program to correct occupational stereotyping for high school girls and boys; and the development of data on the impact of new technology on women in the workplace.

With variations in emphasis, during fiscal 1985 the Bureau's program efforts remained channeled into four broad categories: improvement of women's employment opportunities and support systems; research into economic trends affecting working women; international activities; and the sharing of information, chiefly through publications.

Improvement of Women's Employment Opportunities and Support Systems

Women in Nontraditional Careers (WINC). The Young Women's Christian Association (YWCA) was the first recipient of the Women's Bureau's newly revised guide for teaching career planning skills to young women: *Women in Nontraditional Careers (WINC): Curriculum Guide*. The director of the Bureau presented the 652-page document to the national executive director of the YWCA of the United States on the first day of fiscal 1985. While the focus of the lesson plans and activities remains on junior/senior high school girls, the revised guide addresses related needs of male students, ethnic/racial groups, and rural populations.

In February the Women's Bureau convened a national conference to introduce the WINC concept and process to policymakers, administrators, and program developers as the basis

for the integration of this school-to-work transition program approach into conventional programs and policies for youth. Approximately 200 representatives of the educational community nationwide attended the conference, which was held in Washington, D.C.

Continuing the regional initiative of providing training in the WINC program to school administrators and other personnel, the Bureau held two training workshops in Region VII: in Kansas City, MO, for school systems in Kansas and Missouri, and in Omaha, NE, for school systems in Nebraska and Iowa. Similar workshops were held in Region VI, in Baton Rouge, LA, and in Region VIII, in Riverton and Casper, WY.

WINC was designed for replication in the secondary school system, but it has potential for use in other training and educational programs. In June 1985, the Women's Bureau staff provided orientation on WINC programs to directors of Job Corps centers in Region III. This was followed in August by a training workshop for the staff of the Charleston, WV, Job Corps Center.

Employer-Sponsored Child Care. In fiscal 1985, the Women's Bureau completed the third year of a 5-year project that, in conjunction with the Rockefeller Foundation, addresses employer-sponsored child care. The purpose of the project is to determine how effectively child care needs of single heads of households can be met by integrating the provisions of child care services with employment and training services. In fiscal 1985, project staff made 68 contacts with employers to encourage their involvement in child care assistance.

The Bureau sponsored a child care planning conference, bringing together in Washington, D.C., all of the groups involved in the WB/Rockefeller project: Foundation staff, Bureau staff, and representatives of the four community-based organizations (located in San Jose, CA, Providence, RI, Atlanta, GA, and Washington, D.C.) participating in making child care arrangements for mothers receiving occupational training.

The national and regional offices also responded to several hundred requests for information and technical assistance, largely from corporate personnel and others concerned with extending child care as an employee benefit.

"The Business of Caring," the Bureau's videotape on employer-sponsored child care, was circulated to 250 users on a free-loan basis by the national office alone, with each of the 10 regions also reporting heavy use of their circulating copies of the film.

Job Training Partnership Act (JTPA). The Bureau focused on analysis of transition year 1984 data and on review of findings in outside studies on the implementation of JTPA and its effect on

women. Based on this analysis, and in the absence of data on occupations for which women are being trained, the Women's Bureau funded a study to determine which occupations women are being trained for and those in which they are finding employment. The Bureau also actively participated in the work of the JTPA Performance Standards Advisory Committee formulating its recommendations for performance measurements for fiscal 1986.

Project Discovery. This project was conducted by a nonprofit national organization, The Links, Inc., under the aegis of the Women's Bureau. It was designed to help middle-aged minority women to enter or reenter the job market or to improve their employment status. Participants included single mothers, displaced homemakers, unemployed women, widows, and divorcees.

Workshops of 2 days and half-day followup workshops were conducted in eight cities: Opalocka, FL; Seattle, WA; New Orleans, LA; Glassboro, NJ; Pasadena, CA; Cleveland, OH; and Kansas City, MO; and Washington, D.C. The 2-day workshops brought together women with a variety of special employment-related needs to learn step-by-step measures to prepare themselves for success in applying for jobs; the followups provided an opportunity for participants to share reports of their experiences, good and bad, and to receive technical assistance in overcoming barriers they may have encountered. Well over 750 women attended the entire series. Dozens of the participants were reported to have found employment as a result.

In many of the eight regions where workshops were held, returning participants, spurred by their personal accomplishments in the program, formed support groups and made commitments to replicate Project Discovery.

Displaced Homemakers. The Displaced Homemakers Network, Inc., a national, nonprofit organization that provides coordination, assistance, and advocacy for displaced homemaker efforts, undertook major activities in several areas in its third year of Women's Bureau funding.

The Network continued a national initiative on JTPA training and monitoring by conducting workshops for 465 attendees at three regional meetings and orienting 400 private industry councils (PIC's) at their national conference to the issues facing displaced homemakers in their quest for economic self-sufficiency. They also participated in JTPA women's coalitions. A technical assistance guide for programs seeking access to JTPA was developed, as well

as a publication on how to implement an entrepreneurship training program. (The latter was based on a study of the impact of the training on five local displaced homemaker programs.)

A Network Directory was updated in fiscal 1985, identifying 450 local displaced homemaker programs and their services. A referral system linking individuals with local resources through State or regional contacts provided 3,600 women with assistance during the fiscal year.

Focusing on legislation affecting their constituency, Network staff prepared technical guides and conducted workshops on the Child Support Enforcement Amendments and the Retirement Equity Act at regional conferences. Twelve workshops for a total of 600 participants were conducted on the subject of the Perkins Vocational Education Act. The Network produced materials on the Vocational Education Act to highlight ways to effect JTPA linkages.

A study was begun of nine selected displaced homemaker programs, to learn what has happened to participants in the past 4 years, and a report was begun describing strategies for serving minority displaced homemakers.

Approximately 102,500 individuals were helped through local displaced homemaker programs that received information, skills training, materials, and direct services from the Network.

Union Women. Two events in fiscal 1985 highlighted relationships between the Women's Bureau and union women: a constituency meeting with women leaders of 12 major unions, and a staff seminar led by the AFL-CIO Department of Professional Employees' expert on office automation. The constituency meeting provided an opportunity for the exchange of information, ideas, and publications of mutual interest, particularly with respect to new technologies and their impact on women workers. Participants included directors, research associates, legislative representatives and women's activities coordinators from the Newspaper Guild, the National Education Association, the Teamsters, United Auto Workers, the International Ladies Garment Workers Union, and the Association of Flight Attendants. Among the concerns discussed were equity in education and in the workplace; access to nontraditional and better paying jobs; availability of adequate child care; upward mobility; pay equity; and training and retraining. Secretary of Labor William E. Brock spoke to the women union leaders and responded to their questions.

The staff seminar covered union activities affecting women, particularly research and pilot projects by flight attendants, food services and hospital workers, and members of other unions. Areas

under discussion included occupational health, part-time work, office/homework, high technology, innovative leave policies, job sharing, skills levels, dislocation, and job mobility.

Women Offenders. Fiscal 1985 activities included continuation of the Network on Female Offenders, sponsored by the Women's Bureau since 1979. The Network held quarterly meetings, with attendees representing Federal and State agencies concerned with criminal justice, programs on women offenders, the courts, correctional institutions, State prisons, and local jails. Although the Network is primarily for information exchange, task forces have undertaken action programs. In keeping with the Women's Bureau mandate, aspects of all these programs have an impact on women's employment. In fiscal 1985, the programs focused on girls in trouble with the law; girls in custody and community care; vocational training and education for female offenders; and alternatives to incarceration.

A significant accomplishment in November 1984 was the signing of a second linkage agreement, expanding the previous interagency agreement which serves as a model of post-release services. A major breakthrough in job training for women in prison, the new agreement extends what was originally achieved through the cooperative efforts of three Federal agencies: the Justice Department's Federal Bureau of Prisons, the Labor Department's Bureau of Apprenticeship and Training, and the Women's Bureau, which spearheaded the project. (The Interagency Women Offenders Apprenticeship Committee, established in the late 1970's through the Women's Bureau's efforts, continues to meet with representatives of these agencies.) Under the new agreement, an offender released from the Federal Correctional Institution at Alderson, WV, where a model program effort is in place, would be offered help for job placement and apprenticeship training in the private sector, regardless of where in the country she resides; this assistance originally was limited to residents of the Washington, D.C. area.

Commissions on the Status of Women. The Women's Bureau continued to provide technical assistance to State, county, and local Commissions on the Status of Women, on request, helping to set up new commissions, assisting with program information, and providing linkages to employment and training resources.

In fiscal 1985, 220 commissions were in existence. Eleven new local commissions were established. Women's Bureau regional administrators cosponsored workshops with commissions during fiscal 1985, covering projects and programs in such areas as child care, women in nontraditional careers, career planning strategies, and job training.

Women Immigrant, Refugee, and Entrants (WIRE) Project. In fiscal 1985, the Women's Bureau created a forum, through dialogues, to address the specific needs of immigrant, refugee, and entrant women. Haitian women's needs were examined at a Miami meeting where service providers, policymakers, members of community-based organizations, and the women themselves discussed problems they have encountered relating to their employment, as well as possible solutions. Similar meetings were held in Long Beach, CA, and Brownsville, TX, for Southeast Asian and Hispanic immigrant women, respectively.

The meetings confirmed earlier indications that the greatest single need of these women is job training. The primary recommendation coming out of the dialogues was the creation of training opportunities to provide: instruction in English as a second language; lessons in employability skills and occupational awareness; acculturation and orientation classes; and vocational training for entry-level positions.

Formulating Policy Affecting Women's Employment. In keeping with its congressional mandate "to formulate standards and policies which shall promote the welfare of wage-earning women," the Bureau continued its ongoing task of legislative analysis and comment.

It shares a lead role with the Solicitor's Office in the Department's review of the U.S. Code and departmental regulations, looking for instances of sex bias. During fiscal 1985 the Bureau provided reports to the President's Task Force on Legal Equity for Women, of which the Bureau director is a member. These status reports covered Department of Labor activities with regard to eliminating sex discrimination and unnecessarily gender-specific language from Federal laws administered by the Labor Department, as well as departmental regulations, policies, and practices.

Substantial information was also contributed to the Department's reports to the International Labor Organization.

The Bureau regularly reviews many policy documents submitted by various Government agencies while the documents are in developmental stages, examining the text for impact on issues relating to women's employment opportunities. Part of the task is to determine whether written comment in detail is necessary. During fiscal 1985, the Bureau prepared written comments on 23 separate policy documents.

Research into Economic Trends Affecting Women

Several economic research projects under Bureau sponsorship were in various stages of development during the fiscal year. Chief

among them was the study of the impact of technological change on women's employment. In collaboration with the National Academy of Sciences' Committee on Women's Employment and Related Social Issues, the Women's Bureau held a national symposium to address critical issues created by a rapid influx of high technology in the workplace. The Bureau also completed work on the first in a planned series of publications focusing attention on office automation and the challenges it presents to both employer and employee. When completed, research on the new technology will produce a state-of-the-art review of available data and additional publications identifying new needs and recommending remedies not only to ease the impact of technological change on women workers but to help women take advantage of this modern revolution in the workplace.

International Activities

In fiscal 1985, the Women's Bureau cooperated significantly with international bodies to promote the employment potential of women everywhere. The director served as the U.S. delegate to the Organization for Economic Cooperation and Development (OECD) Working Party on the Role of Women in the Economy, and as one of the Party's vice presidents. The Bureau participated in international conferences sponsored by OECD to discuss the development of local employment initiatives for women. Subjects included: reasons women choose entrepreneurship; support structures needed to help women open a business; and the roles played by the public and private sectors in promoting opportunities for women in entrepreneurship. Emphasis was on the self-sufficiency such ventures engender in women given help to get started.

The Women's Bureau director was a member of the U.S. delegation to the United Nations Conference on the Status of Women, held in Nairobi, Kenya, in July. In anticipation, a coordinated publication and briefing program was developed in the Bureau to inform the official delegation, the nongovernmental organization delegations and observers, and the general public about the status of women in the U.S. labor force during the United Nations Decade for Women. Publications included a 155-page report, *The United Nations Decade for Women, 1976-1985: Employment in the United States*, 10 fact sheets on aspects of the status of women or issues of concern to women in the United States, and a special fact sheet for business women overseas, "Business Development Opportunities in the U.S. for Women in Other Countries." Briefing materials were prepared for the official delegation in advance of the conference and for use at the conference,

and a briefing book was prepared for the director. The conference was regarded as the most successful for the United States because for the first time during the Decade—and at the last of the three meetings—this country was able to ratify the United Nations document. The briefing materials, reports, and papers prepared by the Women's Bureau assisted the U.S. delegation in its activities. In several instances, the language of Bureau reports was used verbatim in the final instrument adopted by the member countries.

The Women's Bureau in fiscal 1985 also continued to host and brief numerous U.S. labor attaches and international visitors on the programs of the Bureau and on matters of concern to wage-earning women. Many of the U.S. embassies overseas now receive copies of Women's Bureau publications for distribution to interested nationals of the host countries.

Information Sharing

Facts and figures about women's employment issues were shared by means of publications, speeches, conferences, and liaison with constituency groups.

During fiscal 1985, the Bureau responded to many thousands of requests, distributing approximately 104,000 of its publications through the national and regional offices. Among the most frequently requested publications were the revised edition of *A Working Women's Guide to Her Job Rights* (25,000 copies distributed) and *Time of Change: 1983 Handbook on Women Workers* (10,000 copies distributed). Continuing interest in child care produced many orders for *Employers and Child Care: Establishing Services Through the Workplace* and the videotape, "The Business of Caring." Also in demand were *Job Options for Women in the 80's* and *A Woman's Guide to Apprenticeship*. Lively interest in the Bureau's school-to-work transition program to eliminate sex stereotyping from career choices resulted in numerous requests for *Women in Nontraditional Careers (WINC): Curriculum Guide*, which is also distributed by the Government Printing Office; the majority were used in regional workshops. A WINC training manual was also developed and printed. About 300 kits of Women's Bureau publications were prepared for distribution at WINC conferences. In June, the Bureau published *The United Nations Decade for Women, 1976-1985: Employment in the United States*; about 4,000 copies were distributed in Nairobi, Kenya, at the closing conference of the U.N. Decade, and the balance of the initial order of 10,000 copies went quickly in domestic distribution, so that an additional order was placed for 15,000 copies. About 2,000 each

of a series of 10 fact sheets on women's employment issues were given out, many of them in Nairobi. Near the end of the fiscal year, *Women's Bureau: Meeting the Challenges of the 80's* was published.

Women's Bureau information also was shared through speeches delivered by the director, regional administrators, and other staff members before varied audiences around the country, as well as in workshops and conferences. The Bureau continued to meet with numerous constituency groups, strengthening the network for the exchange of information and ideas. This close contact with the Bureau's target population keeps the staff current on the changing needs of women in the labor force and on developing trends which may affect women's earning power.

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Office of Inspector General

In its accomplishments during fiscal 1985 the Office of Inspector General (OIG) continued to focus on the detection and prevention of fraud, waste and abuse as well as on improvement in the economy and efficiency of the Department of Labor's programs and operations. The OIG completed its seventh fiscal year, in close cooperation with the Department's agencies and with support from top management and an ambitious program of coordination of operations between the Office of Audit and the Office of Investigations. Convictions and indictments in labor racketeering investigations continued; significant cases involved pension and health benefits funds embezzlement and kickbacks.

As a result of audit work, \$186.5 million in questioned costs and costs recommended for disallowance were identified in 706 reports issued on the Department's programs, grants, and contracts. In the 843 reports resolved, there were \$139.6 million in audit exceptions, of which \$73.3 million was disallowed. By the end of the fiscal year, 20 reports over 6 months old were precluded from resolution, pending conclusion of investigations or settlement of other unique problems.

Audit initiated and completed significant work in several programs. Within the Employment and Training Administration, audit work centered on Unemployment Insurance (UI) financing through experience rating, Federal share of the unemployment compensation program, followup on the Federal employees UI crossmatch, and evaluation of the Job Training Partnership Act programs. Other significant audits included a review of the Federal Employees' Compensation Act (FECA) chargeback system, monitoring the design and development of a new FECA ADP system, and surveys of the Office of Federal Contract Compliance Programs and the Office of the Solicitor.

The UI experience rating system seeks to assign higher or lower UI tax rates to employers in direct proportion to each employer's experience with layoffs. Evidence collected during our audit shows that the application of experience rating has declined over time to a situation in which 49 percent of the cost of the system in the sampled States has become socialized. Financing of UI benefits has shifted from a system based on individual employers' responsibility to manage their work force to a system where all employers share in the costs, regardless of their individual unemployment experience.

The agency is continuing its review of the Federal share of the Unemployment Compensation (UC) program. In 14 reports

issued during the year, the OIG identified approximately \$52 million of Federal benefits as either costs recommended for disallowance or questionable because of an overstatement of charges or ineligible claimant status. State agencies have already refunded about \$7 million of unallowable costs.

Several reviews of the JTPA program are currently underway: (1) A study of participant eligibility to determine the extent to which the program serves individuals intended by the Act; (2) economy and efficiency audits of Indian and Native American (INA) and Migrant and Seasonal Farmworker (MSFW) programs; (3) technical assistance and training in financial management for INA and MSFW grantees, and (4) continued followup on the Job Corps procurement process.

A crossmatch was made of payroll information for eight Federal agencies against unemployment benefits payments in 14 States. As a result of an audit, States declared a total of 954 overpayments, representing \$535,011 in unemployment benefits. Of this total, 528 cases were determined fraudulent, with benefits totaling \$401,884.

The OIG completed an audit of the FECA chargeback system and found that the level of discrepancies did not assure accurate billing to agencies. Problems identified for corrective action were failure (1) to record all transactions properly, (2) to include all payment records on the chargeback listings, and (3) to utilize error reports. OWCP management believes that the FECA Level II system will resolve virtually all the concerns about the chargeback system.

The OIG continued to monitor the design and development of a new ADP system for FECA, the Level II system. Three reports were issued concerning the terms of the contract as well as the performance by the contractor, the schedule for deliverables, and the general functional design specifications for the financial management subsystem. The reviews found problems in performance by the contractor and weaknesses in system specifications, which might possibly not meet GAO Standards and the requirements of the Federal Managers' Financial Integrity Act.

The Office of Federal Contract Compliance Programs (OFCCP) enforces statutes that prohibit employment discrimination by Federal contractors. It was found that OFCCP's effectiveness was hampered partly by organizational and procedural problems.

The OIG performed a survey of the Solicitor's Office and identified significant problems: (1) the need to eliminate a case backlog in the Office of Administrative Appeals; (2) insufficient legal staff

to handle the workload in the Division of Employee Benefits; and (3) a need for legal sufficiency reviews of proposed procurements.

Fraud and integrity investigations conducted by the Office of Investigations (OI) resulted in 570 individuals being convicted. Indictments in fraud and integrity cases totaled 661. The OIG initiated 1,604 investigations and closed 988. Convictions from fraud and integrity investigations brought \$13,822,503 from fines, penalties, restitutions and settlements.

The above fraud investigations contained significant cases in the UI and FECA programs. In addition, investigations were made into possible widespread fraud by Black Lung Program durable medical equipment providers and fraud in obtaining alien certifications for employment.

The majority of UI fraud cases involved falsifying UI benefit claims. Increased prosecution of individuals was achieved by clustering a number of separate fraud cases that, individually, were under the minimum dollar threshold warranting prosecution. Additionally, OI has been successfully pursuing court ordered restitution for some successfully prosecuted claimant fraud matters.

OI also investigated several serious UI frauds in which fictitious employer/employee schemes were used to file false claims. The potential losses from such schemes mount quickly because of the large number of false claims made. A statistical model now in development will facilitate a cost-effective automated system the States can use in detecting such schemes.

The more prominent FECA fraud cases are the concealment of earned income and false billing for services reportedly rendered. In the Black Lung program, several investigations were begun of fraud by providers of oxygen equipment to Black Lung victims. Indications are of a clear possibility of very widespread fraud.

In the last year, OIG devoted considerable resources to investigation of fraud by some attorneys and others in attempting to secure alien employment certification for their clients. Some individuals, it was disclosed, created nonexistent jobs and failed to seek American workers, thus attempting to circumvent Federal regulations. Investigative efforts will continue in this area.

The OIG received and tracked 1,379 allegations of fraud, waste, mismanagement or other irregularities in Department programs, nationwide. The majority of allegations pertained to the largest departmental agencies—the Employment and Training Administration and the Employment Standards Administration.

The OIG's labor racketeering investigations resulted in convictions of 67 individuals or corporations, and indictments of 89. Monetary recoveries from OLR investigations were approximately

\$318,900 in court ordered fines and \$1,411,000 in court ordered restitution to benefit plans and unions.

Two areas where investigations achieved significant results were in the construction industry and employee benefit plans. Numerous investigations centered on the construction trades. The most significant case was the conviction and sentencing of Robert P. Delker to 35 years in prison. Delker racketeered to control Local 1269 of the International Brotherhood of Painters and Allied Trades and to control the union painting work in the Lehigh Valley in Pennsylvania. In the employee benefit area, indictments were returned involving the loss of approximately \$5.3 million from the mid-Jersey trucking industry Teamster Local 701 Pension Fund.

Of equal importance, the enactment of the Labor Racketeering Amendments to the Comprehensive Crime Control Act of 1984 (1) clarified the Labor Department's authority and responsibility to conduct investigations involving pension and welfare plans, (2) increased penalties for violations, and (3) corrected deficiencies that permitted convicted union and plan officials to retain office pending the appeal of their convictions.

An ethics and integrity awareness training program, emphasizing the supervisory or managerial role in dealing with problems of ethics and integrity in the work place, was expanded to 6 hours and offered monthly. In addition to its training effort, OIG initiated a fact sheet series designed to provide general information and guidance to Labor Department employees and members of the public.

ADP initiatives included innovative applications in computer technology to increase audit and investigative productivity. Among these applications were (1) case and project management; (2) document and evidence inventories; (3) information and data analysis; (4) trial exhibit preparation; and (5) in-trial support. Also, OIG completed its initial objective of installing a minicomputer in the national office and in each of its regional offices.

Employees' Compensation Appeals Board

The Employees' Compensation Appeals Board (ECAB) carried out its decision-making activities by closing 2,172 cases during the year. The Board has authority to make final decisions on appeals arising under the Federal Employees' Compensation Act involving work-connected injuries and diseases.

The Board began fiscal 1985 with 721 cases pending. During the year 2,091 new appeals were docketed and 2,172 cases were closed, leaving 640 pending cases at the end of the year. Of the 640 pending cases, 295 are ready for Board action. The balance are awaiting action by the parties, such as the filing of a memorandum by the Office of Worker's Compensation Programs to justify its determination or a reply by an appellant to the Office's memorandum.

The average time lapse between the docketing of an appeal and its disposition by the Board in fiscal 1985 was 2.8 months.

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Benefits Review Board

Fiscal 1985 was a year of growth and change for the Benefits Review Board. At the end of fiscal 1984, Congress mandated an expansion of the Board from three to nine members and authorized the increase of the total organization from the equivalent of 104 full-time positions to 157. Throughout the year, the Board worked to set in place the expanded staff, organization and facilities to implement this mandate and make possible a greatly increased level of production for fiscal 1986. By May, the Board had nine members at work, and by the end of September, all support positions were filled.

Despite the disruption that accompanied an expansion of such magnitude, a record number of case dispositions were issued. Over the course of the year, 2,394 total dispositions were issued, of which 1,997 were Black Lung cases and 397 were Longshore cases. During the year, the Board received 3,131 new appeals; of these 2,499 were Black Lung cases and 632 were Longshore appeals. Since June, the number of appeals pending before the Board has slowly begun to decline. That trend should accelerate beginning in the second quarter of fiscal 1986 when the expansion is fully implemented and the Board reaches its full production capability.

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Information Activities

As the nation prospered in its third year of economic recovery, the American public focused considerable attention on the Labor Department's programs affecting workers and employers and the policies that would be implemented under its new secretary, William E. Brock.

Economic data issued by the Bureau of Labor Statistics kept the public abreast of changes in producer and consumer prices, real earnings, productivity, employment, unemployment and other key trends. Low inflation, coupled with the continuing increase in new jobs, were among highlights of the improving economic picture for most Americans during the 1985 fiscal year.

Meanwhile, Department efforts to deal with persistently high structural unemployment among such groups as youth, minority group members and economically disadvantaged men and women were of equal interest and concern.

Through speeches, news releases and special feature stories issued to the media, the Department sought to keep the public informed of how the Administration's primary employment and training program, the Job Training Partnership Act (JTPA), was working at grass-roots levels to prepare unskilled, long-term jobless workers and to retrain recently dislocated workers for productive jobs.

High unemployment among youth, particularly black teenagers, remained a priority concern. The Administration continued vigorously seeking enactment of its Youth Employment Opportunity Wage (YEOW) proposal, which would be an incentive for employers to create new summer jobs for young people. News releases and speeches by the Secretary and other Department officials helped explain the need for and potential benefits of YEOW, while the Department handled numerous media and public inquiries about the bill.

A major objective of YEOW would be to give more young people a chance to acquire initial work experience; this would equip them to compete more successfully for jobs as adults. The need to adequately prepare all American workers for jobs, both now and in the changing job markets of the future, became a dominant theme of many Department programs and communication activities during the year.

For example, Secretary Brock emphasized in speeches, news briefings and media interviews the importance of improving basic

education in schools and providing more training and retraining for workers displaced because of technological advances, foreign competition and other market forces.

The Secretary also stressed in his public statements the need for cost-effective Federal regulations, greater labor-management cooperation in the workplace, and more private-sector support and involvement in such programs as JTPA. These initiatives, he said, are necessary not only to raise our industrial productivity and to maintain U.S. competitiveness in the world, but also to reduce unemployment and assure the creation of enough jobs for our expanding workforce.

As primary spokespersons for Department policies and programs, the Secretary and other agency officials sought to keep in touch with constituents by accepting speaking engagements, issuing statements on important issues or events, serving as guests on local and national television and radio shows and holding media interviews.

In addition, Secretary Brock initiated a series of regional news briefings in his office for groups of Washington, D.C. correspondents from daily newspapers across the country.

To further sharpen the Department's communication with various constituent groups, special packets of news and information mailed weekly to Hispanic and black media were strengthened and more closely tailored to minority-group interests.

The Department routinely issued news releases and responded to inquiries concerning progress or new developments in its regulatory and enforcement programs. These include occupational and mine safety and health, private pension and welfare benefit plan security, fair labor standards and equal employment opportunity.

Several newsworthy events sparked more than the usual number of inquiries and required special information efforts by the Department's national and regional information staffs. Among them were the U.S. Supreme Court's ruling in *Garcia v. San Antonio Metropolitan Transit Authority*, which required the Department to plan for enforcing Federal wage and hour rules in State and local governments; serious coal-mine and chemical-industry accidents that resulted in major safety and health investigations, and the Occupational Safety and Health Administration's actions regarding field sanitation for migrant farmworkers.

Throughout the year, the Department worked within the framework of a national information plan to bring news and information about its many programs to every group affected by

them, including labor, management, women, minorities, military veterans, small business and all levels of government.

Using information efforts as a tool for promoting greater understanding, cooperation and mutual support among these groups, the Department more effectively achieved its broad goal of improving its services to the American people.

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Appendix Tables

Appropriations and Other Obligational Authority

Number of Employees on Labor Department Rolls As of
October 1, 1985

Characteristics of Participants in Titles IIA and III of the Job Train-
ing Partnership Act during Program Year 1984

Selected Employment Services, by Region and State, Through
Third Quarter, Program Year 1984

Benefit Data Under State Unemployment Insurance Programs, by
State for 12 Months Ending December 31, 1984

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Appropriations and Other Obligational Authority

	Fiscal year 1985 Amounts
Federal funds:	
Employment and Training Administration, Program Administration.....	67,625,000
Training and Employment Services.....	3,774,662,000
Community Services Employment for Older Americans.....	326,000,000
Federal Unemployment Benefits and Allowances.....	75,000,000
Grants to States for Unemployment Insurance and Employment Services.....	23,500,000
Advances to the Unemployment Trust Fund and Other Funds.....	0
Total, Employment and Training Administration.....	4,266,787,000
Labor Management Services.....	60,211,000
Employment Standards Administration.....	192,582,000
Special Benefits.....	211,400,000
Occupational Safety and Health Administration.....	219,652,000
Mine Safety and Health Administration.....	150,550,000
Bureau of Labor Statistics.....	152,860,000
Departmental Management.....	102,330,000
Office of the Inspector General.....	99,323,000
Special Foreign Currency.....	67,000
Proprietary Receipts.....	(351,300,000)
Total, Federal funds.....	5,044,462,000
Trust funds:	
Unemployment Trust Fund (ETA).....	28,600,000,000
Black Lung Disability Trust Fund (ESA).....	942,713,000
Special Workers' Compensation (ESA).....	63,000,000
Gifts and Bequests (ETA).....	10,000
Total, Trust funds.....	29,605,723,000
Interfunds transactions.....	(6,966,776,000)
Total, Department of Labor budget.....	27,683,409,000
Other funding:	
Punds appropriated to other agencies for programs administered by the Department of Labor:	
Department of Health and Human Services (Work Incentive Program).....	266,760,000
Other Federal Agencies (Federal Employees Compensation Act).....	856,125,000
Total, Other funds.....	1,122,885,000
Grand Total, All funds.....	28,806,294,000

Number of Employees on Labor Department Rolls as of October 1, 1985

	Full-Time Permanent			Other		
	Total	D.C.	Field	Total	D.C.	Field
All Agencies.....	17,419	6,389	11,030	1,163	310	853
ETA.....	1,708	766	942	93	46	47
LMS.....	919	380	539	14	9	5
ESA.....	3,980	796	3,184	237	42	195
OSHA.....	2,176	414	1,762	70	12	58
MSHA.....	2,829	256	2,573	92	22	70
BLS.....	2,006	1,477	529	477	63	414
SOL.....	728	436	292	44	32	12
ILAB.....	93	89	4	10	10	0
OSEC.....	185	127	58	2	0	2
OASAM.....	971	580	391	59	25	34
OIG.....	541	153	388	21	10	11
VES.....	270	30	240	7	4	3
Other.....	552	424	128	29	27	2
PBGC.....	461	461	0	8	8	0

Characteristics of Participants in Titles IIA and III of the Job Training Partnership Act During Program Year 1984

Characteristics	Percent distribution	
	Title IIA ¹	Title III ²
Total participants:		
Number	941,600	177,700
Percent	100	100
Male	48	62
Female	52	38
Age:		
Under 22	40	5
22-54	56	87
55 and over	3	7
Education:		
School dropouts	27	20
Student	13	1
High school graduate	60	79
Race/ethnic group:		
White	55	70
Black	31	20
Hispanic	10	7
Other	4	3
Limited English-speaking ability	3	2
Handicapped	9	3
Unemployment insurance compensation claimant	9	50
Economically disadvantaged	93	NA.
Receiving public assistance	42	NA.

Note: Totals may not add to 100 percent due to rounding.

¹Source: JTPA Annual Status Report, JTPA Quarterly Status Report, and Job Training Longitudinal Survey (JTLS).

²Source: JTPA Annual Status Report and JTPA Quarterly Status Report.

NA. = Not available.

Selected Employment Services, by Region and State, Through Third Quarter, Program Year 1984 (July 1, 1984-March 31, 1985)

	New & renewal applicants	Referred to jobs	Job openings received	Placement transactions Total	Nonagricultural
U.S. Total	11,525,550	5,470,054	5,568,925	3,823,742	3,505,938
Region I (Boston)	504,728	275,222	297,133	151,788	148,455
Connecticut	143,961	63,127	54,627	27,780	26,780
Maine	62,424	36,143	29,755	18,905	18,396
Massachusetts	176,890	105,397	134,618	67,277	66,020
New Hampshire	35,820	21,713	30,722	10,471	10,374
Rhode Island	42,384	23,786	27,039	16,114	16,029
Vermont	43,249	25,056	20,372	11,241	10,856
Region II (New York)	752,207	272,229	566,562	417,975	410,021
New Jersey	220,590	73,098	98,530	56,236	55,706
New York	418,271	179,639	456,327	352,384	346,543
Puerto Rico	113,346	19,492	11,705	9,355	7,772
Region III (Philadelphia)	1,052,843	460,782	400,001	268,819	263,405
Delaware	24,192	9,315	10,467	6,761	5,678
Dist Columbia	63,912	34,383	67,269	35,792	35,738
Maryland	133,287	50,864	45,896	31,728	31,041
Pennsylvania	553,405	220,888	169,971	134,189	132,369
Virginia	187,083	102,563	81,997	39,285	37,972
West Virginia	90,964	42,769	24,401	21,064	20,607
Region IV (Atlanta)	2,276,772	1,182,577	1,022,443	770,048	696,705
Alabama	273,037	129,210	87,256	72,384	71,701
Florida	459,753	282,437	298,127	180,640	165,366
Georgia	278,038	124,786	100,877	77,099	71,324
Kentucky	166,693	90,071	69,983	61,531	60,394
Mississippi	253,259	114,814	78,979	64,769	64,254
North Carolina	400,918	209,517	192,206	150,988	112,442
South Carolina	212,889	108,957	106,339	92,330	82,607
Tennessee	232,185	122,785	88,676	70,307	68,617
Region V (Chicago)	2,333,504	891,010	809,460	535,088	452,277
Illinois	510,644	196,464	162,945	131,512	127,938
Indiana	344,245	147,073	127,647	77,700	49,920
Michigan	391,107	119,517	184,389	100,029	83,265
Minnesota	234,907	136,297	127,608	91,990	67,761
Ohio	571,875	162,289	128,429	82,554	75,126
Wisconsin	280,726	129,370	78,442	51,303	48,267
Region VI (Dallas)	1,748,201	886,434	752,490	606,765	565,106
Arkansas	211,749	105,834	79,460	65,956	64,264
Louisiana	238,529	104,801	77,065	63,313	62,870
New Mexico	103,559	42,693	39,972	31,461	29,383
Oklahoma	253,652	93,445	97,250	85,324	82,658
Texas	940,712	539,661	458,743	360,711	325,931
Region VII (Kansas City)	848,949	431,086	403,457	280,539	261,607
Iowa	240,054	129,836	120,736	101,498	96,047
Kansas	130,401	73,468	99,226	50,372	43,348
Missouri	390,277	170,186	123,071	85,724	82,813
Nebraska	88,217	57,596	60,424	42,945	39,399
Region VIII (Denver)	509,076	313,105	349,002	239,831	225,187
Colorado	135,045	82,408	125,028	59,683	55,904

Montana	82,173	39,563	46,994	38,564	35,980
North Dakota	56,208	40,401	31,198	25,987	23,616
South Dakota	61,781	42,395	38,264	32,524	31,464
Utah	124,528	76,367	77,964	57,362	53,420
Wyoming	49,341	31,971	29,554	25,711	24,803
Region IX (San Francisco)	912,304	457,334	721,003	351,932	329,778
Arizona	*	*	*	*	*
California	795,885	390,980	666,727	314,615	293,890
Hawaii	53,517	29,976	18,862	12,834	12,283
Nevada	62,902	36,378	35,414	24,483	23,605
Region X (Seattle)	586,966	300,275	247,374	200,957	153,397
Alaska	62,942	36,974	39,040	30,924	30,711
Idaho	85,842	53,325	35,456	30,722	26,572
Oregon	172,867	94,625	76,968	58,268	40,465
Washington	265,315	115,351	95,910	81,043	55,649

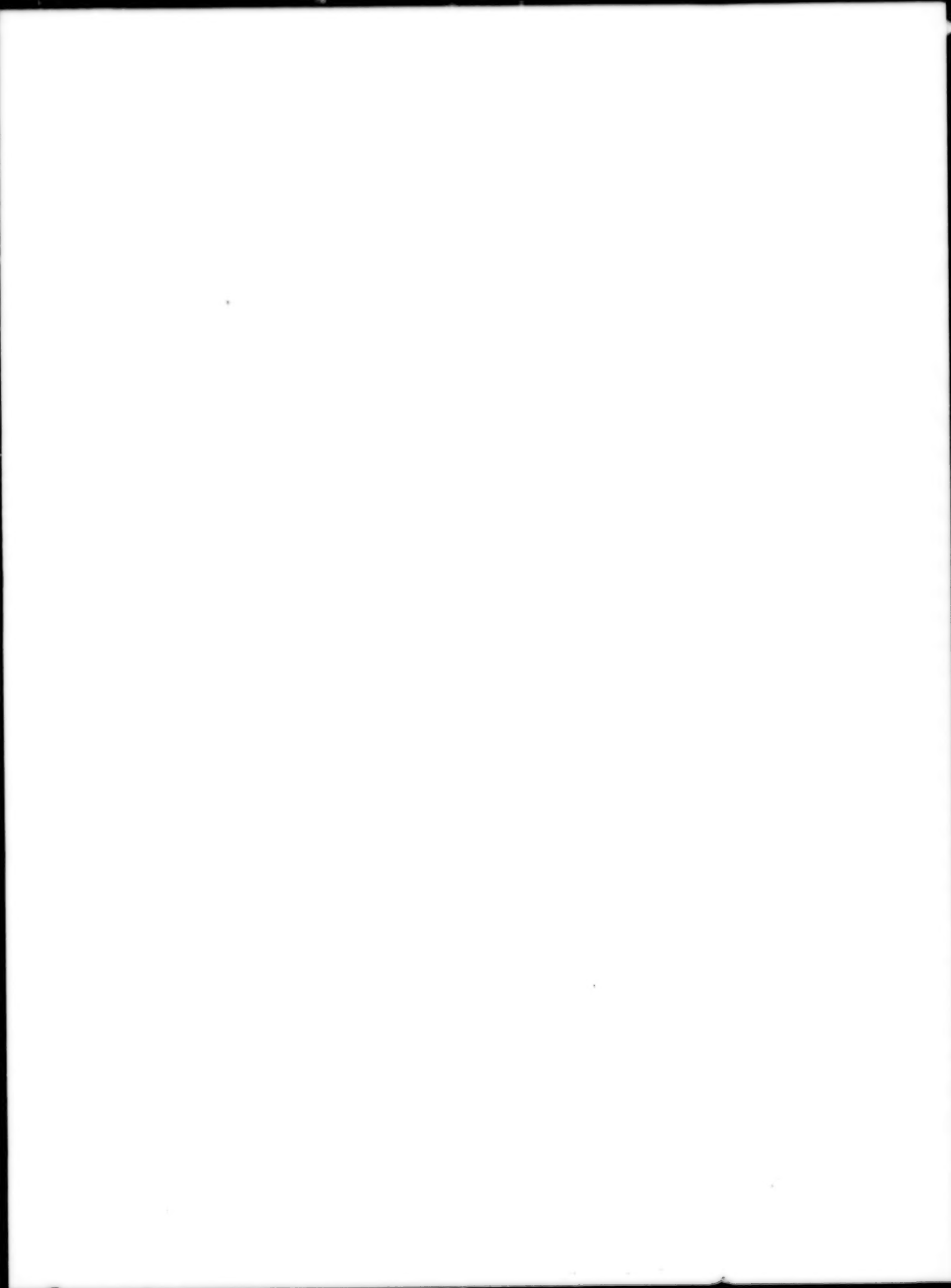
*Dataset Missing

Benefit Data Under State Unemployment Insurance Programs, by State, for 12 Months Ending December 31, 1984

	Average weekly insured unemployed				Average weekly benefit amount				Duration: (in weeks) all beneficiaries		Claimant exhaustion benefits		
	Initial claims	Number	Percent of covered employment	Total number of beneficiaries	Average weekly beneficiaries	Average weekly wage in covered employment	Amount	Percent average weekly wage	Potential	Actual	Actual for exhaustees	Number	Percent for all beneficiaries
U.S. Total	19,585,714	2,474,810	2.7	7,742,747	2,146,724	347.49	123.47	35.5	23.1	14.4	21.9	2,606,145	34.2
Alabama	435,832	42,520	3.3	170,192	35,859	302.93	95.28	31.5	22.9	11.0	21.0	51,885	32.4
Alaska	79,251	11,965	5.9	45,452	12,744	556.70	139.72	25.1	20.6	14.6	19.8	20,704	47.2
Arizona	147,355	19,315	1.7	54,586	14,301	329.63	102.19	31.0	24.3	13.6	22.1	17,535	29.4
Arkansas	229,626	24,931	3.4	86,677	19,489	283.82	97.80	34.5	23.2	11.7	22.1	21,062	26.9
California	2,654,285	348,123	3.3	990,629	310,037	379.81	111.91	29.5	24.1	16.3	23.0	365,255	36.8
Colorado	170,038	28,564	2.2	86,510	20,352	357.03	144.46	40.5	22.3	12.2	21.9	35,292	37.5
Connecticut	215,886	25,813	1.7	111,322	24,038	382.97	134.41	35.1	26.0	11.2	26.0	18,919	16.5
Delaware	40,847	5,170	1.9	20,843	5,311	353.52	113.45	32.1	25.9	13.3	25.9	3,742	16.7
Dist. of Col.	37,727	9,159	2.4	22,570	8,410	429.67	144.36	33.6	21.2	19.4	24.6	12,039	50.9
Florida	399,442	54,565	1.3	184,982	42,586	306.94	104.69	34.1	20.0	12.0	18.2	67,292	35.9
Georgia	439,129	37,773	1.6	204,841	35,309	320.82	101.90	31.8	20.0	9.0	18.9	54,775	29.8
Hawaii	75,697	11,073	2.8	33,576	9,588	305.86	141.20	46.2	26.0	14.8	26.0	9,393	28.9
Idaho	111,765	12,408	4.0	41,957	10,006	298.59	120.56	40.4	18.4	12.4	16.2	18,567	44.6
Illinois	817,606	135,565	3.0	356,033	120,478	377.03	134.26	35.6	26.0	17.6	25.8	144,590	39.4
Indiana	429,907	49,429	2.5	164,804	40,393	340.30	91.76	27.0	20.9	12.7	19.4	63,690	39.8
Iowa	195,897	27,259	2.7	97,603	24,330	298.53	129.13	43.3	22.3	13.0	20.3	31,219	33.3
Kansas	151,846	19,040	2.1	69,267	17,081	317.23	130.01	41.0	22.4	12.8	21.3	24,884	35.3
Kentucky	279,871	34,966	3.1	120,618	32,637	316.49	99.56	31.5	26.0	14.1	26.0	33,676	29.2
Louisiana	386,119	58,539	3.8	158,099	54,116	339.22	152.25	44.9	23.9	17.8	24.0	80,161	49.5
Maine	147,465	14,744	3.5	34,709	11,209	282.38	112.42	39.8	22.6	16.8	21.0	19,714	57.5

Benefit Data Under State Unemployment Insurance Programs, by State, for 12 Months Ending December 31, 1984—cont.

Maryland	253,800	37,070	2.2	117,077	31,457	336.61	124.37	36.9	26.0	14.0	26.0	30,592	26.1
Massachusetts	433,248	60,754	2.2	185,618	54,076	351.48	129.47	36.8	26.8	15.1	25.1	49,860	26.4
Michigan	857,383	102,143	3.2	349,799	85,908	401.24	143.75	35.8	23.1	12.8	21.3	101,268	31.2
Minnesota	255,708	38,476	2.2	126,823	34,226	344.70	146.15	42.4	22.7	14.0	19.6	46,082	36.7
Mississippi	247,735	27,450	3.5	84,417	21,487	271.65	88.23	32.5	23.7	13.2	22.6	24,077	30.4
Missouri	434,214	45,039	2.4	160,780	35,661	334.08	92.51	27.7	21.4	11.5	19.3	49,182	31.3
Montana	68,030	10,260	4.0	35,020	9,054	292.47	132.06	45.2	20.6	13.4	18.9	15,078	41.8
Nebraska	76,742	11,604	1.9	40,377	9,651	287.63	102.57	35.7	21.7	12.4	17.2	13,973	34.0
Nevada	86,380	11,407	2.8	39,257	10,491	334.29	125.70	37.6	17.8	13.9	11.3	12,393	30.6
New Hampshire	57,658	5,696	1.3	31,656	5,332	304.59	111.53	36.6	26.0	8.8	26.0	2,398	7.1
New Jersey	592,759	94,211	3.0	298,544	91,663	378.14	133.57	35.3	23.2	16.0	21.3	145,805	46.9
New Mexico	75,702	12,715	2.8	32,945	10,510	308.38	111.36	36.1	25.8	16.6	25.3	12,625	36.9
New York	1,274,621	210,085	2.9	543,857	190,175	397.14	122.91	30.9	26.0	18.2	26.0	214,310	40.0
North Carolina	871,633	50,032	2.0	249,506	40,279	293.89	103.68	35.3	22.8	8.4	20.6	41,158	19.6
North Dakota	49,388	6,785	3.0	22,757	6,466	290.19	139.01	47.9	21.4	14.8	19.2	9,763	43.0
Ohio	828,459	118,812	2.9	328,120	94,626	358.55	140.97	39.3	25.4	15.0	25.0	106,697	33.0
Oklahoma	174,041	22,005	2.0	74,696	19,191	333.70	135.01	40.5	23.3	13.4	19.8	28,433	35.6
Oregon	347,013	39,665	4.2	118,020	33,161	330.09	126.99	38.5	25.4	14.6	24.8	33,051	27.9
Pennsylvania	1,419,729	181,173	4.1	497,587	157,179	340.93	142.66	41.8	26.0	16.4	27.9	144,166	29.4
Puerto Rico	282,269	39,684	5.7	36,345	27,334	195.49	66.22	33.9	20.0	39.1	20.0	31,754	95.8
Rhode Island	126,103	12,544	3.1	44,660	11,640	306.02	115.54	37.8	22.7	13.6	20.5	13,041	28.3
South Carolina	431,455	28,366	2.4	122,790	22,847	289.54	94.18	32.5	24.1	9.7	22.7	26,867	26.3
South Dakota	26,027	2,472	1.1	8,807	1,791	253.21	105.00	41.5	24.7	10.6	24.4	1,046	13.3
Tennessee	506,929	40,661	2.4	146,949	33,766	305.60	86.49	28.3	23.0	11.9	21.1	28,307	20.9
Texas	715,626	92,551	1.5	303,888	82,524	359.67	139.31	38.7	20.6	14.1	19.8	131,263	39.6
Utah	93,681	13,274	2.5	40,741	9,598	322.43	135.70	42.1	20.2	12.3	19.0	12,856	31.6
Vermont	44,660	6,288	3.1	21,106	5,636	290.25	113.68	39.2	26.0	13.9	26.0	4,033	18.4
Virginia	345,494	23,889	1.1	135,655	21,813	318.93	110.43	34.6	20.9	8.4	19.0	25,852	20.5
Virgin Islands	6,282	1,416	3.8	3,646	1,376	274.36	107.99	39.4	26.0	19.6	26.0	1,707	46.1
Washington	514,397	65,913	4.3	188,103	58,449	348.10	137.63	39.5	26.4	16.2	25.2	61,113	32.7
West Virginia	123,952	26,716	4.8	77,566	23,603	332.95	128.25	38.5	28.0	15.8	27.8	23,547	32.8
Wisconsin	487,739	60,216	3.2	205,172	53,279	325.57	136.01	41.8	23.6	13.5	23.3	63,132	31.9
Wyoming	31,266	4,516	2.4	15,193	4,201	349.12	122.92	35.2	9.8	14.4	6.6	6,322	33.5



END

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